

Ibn Taimiyya on Public and Private Law in Islam

or

Public Policy in Islamic Jurisprudence

Translated from Arabic by

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Translator's Introduction

Ibn Taimiyya was one of the religious reformers in Islam. A (religious) reformer in Islam, called in Arabic **Mujaddid** (renewer), is a pious learned man who attempts to reform the religious behaviour of the community by leading those groups and individuals, affected by various aspects of corruption, back to the form of Islam originally practised by the Prophet Muhammad, by his Companions ⁽¹⁾ and by the generation following them. This concept of religious reform is totally and fundamentally different from the idea of the **Reformation** carried on in Christian Europe at the beginning of modern times. The Reformation tried to accommodate established Christianity to the new social needs and to the intellectual development of the age. Religious reform in Islam, on the contrary, aims at the correction of the religious behaviour of certain groups and individuals whenever and wherever such correction is needed, by re-teaching them the precepts of Islam and reminding them of the original aim of Religion.

To understand Islam and religious reform in Islam, and to appreciate the thoughts and views of Ibn Taimiyya as well, the western reader should be aware of the following fundamental points:

1 — Islam believes that there is only ONE Religion and not various religions. If Religion had a Divine origin and was revealed by Allāh (God of the western writers), then that Religion could have been but one. Truth, whether religious or otherwise, is one; and it is unthinkable that Allāh should have assigned to the various communities of Humanity various **truths**,

(1) The Companions, of the Prophet Muhammad, are the people who lived at the time of Muhammad and embraced Islam and became acquainted with Muhammad personally.

so to speak. With this in mind, Islam maintains that Allâh must have revealed this one truth to His first messenger-prophet to Humanity. This Truth (called in Arabic: *dîn*, custom, behaviour; in the European languages: religion, of an unknown etymology and, consequently, of a very vague meaning) was, by the action of time and with the lack of intelligence of the masses, misrepresented and misunderstood. So Allâh sent a second messenger-prophet to set these masses on the right track of Truth again. The concept and aspects of Religion were, at the same time and in the same way, defaced and deformed, so that they too needed some re-statement. Mûsâ (Moses), according to Islam, was sent by Allâh to re-state the Religion and to re-educate mankind in Religion. Then 'Isâ Ibn Maryam (Christ the son of Mary) was sent by Allâh to re-state once again the doctrine and the precepts which had, in the interval between him and Moses, suffered defacement and deformation. Then Muhammad, the Last Messenger of Allâh, was sent by Allâh to effect the Religious reform for the last time.

2 — Islam is the Religion of Allâh, as was the original Judaism and the original Nasrâniyya (Christianity). But Islam is different from both, and from other religions too, in that the social and practical aspects are more emphasized in Islam than the metaphysical and theoretical aspects. Islam rests on a very simple doctrine of the Unity of Allâh and of the belief that Muhammad is His last Messenger to mankind. Good actions in Islam are more important than nominal belief, as nominal belief (without good actions) is of no value.

3 — Allâh in Islam is not only one in number, but He is also Unique in His attributes : neither does He resemble any of His creatures, nor do any of His creatures resemble Him. Incarnation, for instance, is—according to Islam— quite contrary to the concept of Unity.

4 — Muhammad is a man with nothing Divine in him. Further, he is not the founder of Islam, but the preacher of

Islam and the first Muslim. So it is quite erroneous to call Islam Muhammadanism and Muslims Muhammadans, as we say, for instance, Christianity and Christians.

Ibn Taimiyya and his time

Every period of history has some disturbances in one or more of the domains of public life. Ibn Taimiyya's time was not an exception to the rule. He lived in the second half of the VIIth. century and the first quarter of the VIIIth. century of the Muslim era (second half of the XIIIth. and first quarter of the XIVth. A.D.). Five years before he was born, the world witnessed the sacking of Baghdâd by Hulago's Mongolian hordes 656 A.H. (1258 A.D.) and the fall of the Abbasid Caliphate after five and a quarter centuries of religious and political supremacy. Ibn Taimiyya himself witnessed the happy events which led to the complete expulsion of the Crusaders from their last strongholds in Syria 690 A.H. (1291 A.D.). He also witnessed the disorder which affected Northern Syria as a result of the Tartar (Mongolian) invasion. And although the Tartars had already embraced Islam, war broke out between them and the Mamlukes (the rulers of Egypt and Syria), and Ibn Taimiyya himself took a very active part in all the battles which re-established the Mamluke rule in Syria.

Ibn Taimiyya's life fell wholly within the period of the first Mamluke dynasty 648-784 A.H. (1250-1382 A.D.). The Turkish Mamlukes were despotic and, in a way, oppressive, but their banners in the service of Islam and the Arabs were victorious everywhere.

Ibn Taimiyya — Ahmad Ibn (the son of) 'Abdul-Halîm Ibn 'Abus-Salâm — was born in Harrân (Northern Syria) on the 10th. of Rabi' al-Awwal 661 A.H. (13/1/1263 A.D.). When he was about six years old, his family migrated to Damascus, where he began to be educated in religious sciences and in the branch of Hadîth (Tradition, Sayings of the Prophet Muham-

mad) ⁽¹⁾, in particular. His first teacher was his father, but afterwards he also frequented the circles of other teachers. It is said that his teachers numbered over two hundred of the very best learned men of the Hanbalite school of thought.

The Hanbalites are the followers of Ahmad Ibn Hanbal 241 A.H. (855 A.D.) who was versed more in the science of Hadith than in other branches of knowledge. In fact, he was inclined to depend, in matters of Religion, on the Qur'an, on the Sayings and actions of the Prophet Muhammad and on the behaviour of the first generation of Muslims. He was not in favour of *opinio*. Furthermore, he was very strict in his attitudes and views and very idealistic.

Ibn Taimiyya imbibed all the tendencies of Ahmad Ibn Hanbal and pushed these, in his private and his public life, to the extreme.

In 681 A.H. (1282 A.D.) Ibn Taimiyya's father died. A few years later, Ibn Taimiyya, then twenty two years old, succeeded him as Professor of Hanbalite jurisprudence.

It seems that things went smoothly with Ibn Taimiyya until the year 698 A.H. (1298-1299 A.D.) when he was asked publicly about the attributes of Allāh. At that time he was beginning to develop an opinion of his own on that thorny subject. He declared in an epistle called "the Hamwiyya," that Allāh has an Essence predicated by positive attributes ascribed to His Essence. Though these Attributes are similar in appellation to the attributes of man, they are different from them in degree and in purpose. These Attributes are additions to the Essence, and some of them are eternal with that Essence, but nothing prevents Allāh, Who knows all things from eternity, from knowing things when they occur individually (in our world).

(1) Tradition (Arabic: Hadith): Sayings of the Prophet Muhammad which serve as explanation and commentary on the Qur'an, and give the details of the doctrine and precepts of Islam mentioned in the Qur'an.

This view is different from the view held by the rational philosophers that no Attributes may be ascribed to the Deity. It is also different from the view of the Mu'tazilites ⁽¹⁾ who hold that only a few necessary Attributes are ascribed to Him, as One, Eternal, Omnipotent, etc. Similarly, it is different from the view of the Ash'arites ⁽²⁾ who maintain that Allāh's Attributes are of two kinds: those which are ascribed to Allāh as such, as Living, Mighty, Creator, etc.; and those which should be ascribed to Him only after an interpretation in the spirit of Arabic Rhetoric. One example of these is the concept mentioned of Allāh in the Qur'anic Verse *istawa ala-'Arsh* (VII 53, X 3, XIII 2, XXV 59, XXXII 4, LVII 4) meaning "He has taken position on the Throne", rendered by Rodwell ⁽³⁾ as "mounted the throne", by Maulāna Muhammad Ali ⁽⁴⁾ as "established on the Throne", by Marmaduke Pickthall ⁽⁵⁾ as "then mounted He the Throne" and by Bashir ud-Din Mahmud Ahmad ⁽⁶⁾ as "He

- (1) The Mu'tazilites are rational thinkers who tried to inquire into the nature of the doctrines in Islam, as early as the beginning of the second century of the Hijra (VIIIth A.D.). They hold that reason has, even in matters of belief, priority over the religious traditions, if these religious traditions contradicted reason.
- (2) The Ash'arites represent a movement begun in 295 A.H. (908 A.D.) by Abū al-Hasan al-Ash'arī, d. 330 A.H. (942 A.D.), as a reaction against the Mu'tazilites. They gave priority over reason to the religious traditions. Although they rejected fundamentally the authority of reason in matters of belief, they borrowed from logic and rational philosophy, and even from their opponents the Mu'tazilites, proofs to support their views.
- (3) The Koran, Translated from the Arabic by the Rev. J.M. Rodwell (Everyman's Library, No. 380).
- (4) The Holy Qur'an, Translation and Commentary by Maulāna Muhammad 'Alī, Lahore 1951, p. 1028.
- (5) The Meaning of the Glorious Koran, an Explanatory Translation, by Marmaduke Pickthall, London 1952, p. 163.
- (6) The Holy Qur'an, ... English Translation by Hazrat Mirza Bashir ud-Din Mahmud Ahmad, Rabwah 1960, p. 147.

settled Himself on the Throne". The Ash'arites hold in this respect that "sitting on the throne in general is quite known, but how it is to be conceived in the case of Allâh is not known". Ibn Taimiyya rejects this attitude and asserts that "sitting on the throne" implies — even in the case of Allâh — that which is **above** (Allâh), that which is **below** (our world) and that which is **in between** (Allâh's Throne). Shaikh Bahjat al-Bitâr ⁽¹⁾ defends Ibn Taimiyya against a possible accusation of anthropomorphism by saying: "to be above the Throne" does not necessarily imply sitting on it or being in contact with it.

Ibn Taimiyya takes, towards this and similar subjects, a definite stand, namely that when Allâh uses an expression in the Qur'ân, when the Prophet Muhammad uses an expression while conversing with his Companions and when the first generation of the Muslims had understood an expression to mean a certain thing, we ought not to deviate from the meaning intended from the expression. Any statement related to us (by the Prophet Muhammad) from Allâh, or related to us from the Prophet Muhammad himself in the right way is true and can be subscribed to by sound reason. And anything rejected by revelation or by a Saying related to us in the right way from the Prophet Muhammad, is rejected likewise by sound reason. Sound reason, declares Ibn Taimiyya, cannot contradict revelation or Sayings related in the right way from the Prophet Muhammad.

Ibn Taimiyya was, however, very severe in attacking his opponents and uncompromising in his attitudes. Moreover, he spared nobody, layman or dignitary, ruler or conqueror. And although he irritated, by his severe criticism and damaging attacks, people in all walks of life: jurists and theologians, rational thinkers and laity, representatives of religious sects and rulers, he was very much esteemed and feared. None could blame him

(1) *Hayât Shaikhu-l-Islam Ibn Taimiyya*, by Muhammad Bahjat al-Bitâr, Damascus (al-Maktab al-Islâmî) 1380 A.H. (1960 A.D.), p. 7.

for anything he said except that he sometimes spoke harshly and that he never paid any deference to any man who was not in the right.

At last Ibn Taimiyya was accused, falsely however, of attempting usurpation of political power. In 705 A.H. (1305-1306 A.D.) he happened to be in Cairo, the seat of the central government of the Mamlukes; an opportunity was at hand to imprison him. He was conveyed, with due deference, to the tower of Cairo. The prison had no effect on Ibn Taimiyya in the least; he continued to carry on among the prisoners his planned scheme for reform and to correspond on the same subject with different people outside the prison. After a whole year of imprisonment it was decided that he should be released, the accusation and the punishment being both wholly unjust.

Ibn Taimiyya did not return to Damascus before the end of 712 A.H. (beginning of 1313 A.D.). In Damascus he was imprisoned twice for the same reasons and on the same pretexts: once for five months in the years 720-721 A.H. (1320 A.D.) and another time in 726 A.H. (1326 A.D.). This second time he remained in prison until his death in Shawwâl 728 A.H. (1328 A.D.).

Text and translation

The present translation is made principally from an edition published by Muhammad Mûsa Khalîl, Cairo 1381 A.H. (1961 A.D.). Besides certain explanations of some words and terms, this edition makes no pretention to an internal or external criticism. In fact, this edition may be termed as "commercial" or "poor" as it has some lacunae and many misprints.

I had at my disposal another edition by Ali Sâmî an-Nashshâr and Ahmad Zaki Atiyya (second ed., Cairo 1951 A.D.), but it turned out to be hardly better than the former. The same lacunae and the same misprints met me every time I turned to it for help.

Some lacunae and misprints are the following:

p. 116 for عنب ('inab, grapes) read قنب (qunnab, hemp).
يشون (yanshûn, ?) read ينتشون (yantashûna, get dizzy).

126 for مقاتله (mupâtilahu, one fighting him)
read مقاتله (maqâtilahu, mortal spots of the body).

149 for يجتنون (yajtanibûna, they avoid)
read يجتلبون (yajtalibûna, they procure or acquire).

156, line 3 from below, (lacuna).

179, line 3, (lacuna).

I tried occasionally to seek help from the French translation by Henry Laoust ⁽¹⁾ which is planned on a serious and scholarly basis. Henri Laoust, however, also had some difficulties with the Paris MS ⁽²⁾, which is also not without faults. Laoust's translation was of scarcely any help to me because our ways of translation were different: I tried to be as sincere to the text of Ibn Taimiyya as possible; Laoust, on the other hand, to overcome the difficulties, resorted sometimes, and especially in the latter part of the book, to simplification and to omissions of those short sentences which complicate the translation and render it (when not cleverly woven into the whole frame) unreadable.

Because of such simplification and omissions a thorough comparison of the translation with the original text was very difficult. At any rate, these remarks may be very relevant here:

P. 67 اهل الاهواء *ahlu-l-ahwâ'*, (people of personal interests) has been translated: artisans, — artisans or hand-craftsmen.

P. 115 يتعزى بعزاء الجاهلية *yata'azzâ bi-'azâ' al-jâhiliyya* — misspelled in Paris MS (fol. 39B) and in the two editions at my disposal (M.M. Khalil, p. 112 and an-Nashshâr & 'Atiyya,

(1) *Le Traité de Droit Public d'Ibn Taimiyya*, par Henri Laoust (Institut français de Damas), Beyrouth No. PS 30, 1948.

(2) Bibliothèque Nationale 2443. (Microfilm in the Library of the American University of Beirut).

p. 120). Laoust translates it as "ceux qui prennent le deuil (sic!) comme on le faisait à l'époque du paganisme" (those who put into mourning (sic!) as was done in the time of — Pre-Islamic — paganism). The sentence should mean: "those who boasted of their ancestry and deeds after the manner of Pre-Islamic paganism".

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I have not seen the two MSS of Cairo ⁽¹⁾ nor the MS of Damascus ⁽²⁾; but the former were used by An-Nashshâr and 'Atiyya, and the latter was used by Laoust. So I consider that I have an indirect access to them.

My difficulties in making this translation were of a different nature, namely:

1. Ibn Taimiyya's style is that of a religious jurist: compact, stiff and full of allusions. The jurists take for granted that every person knows the minute details of their branches of knowledge as they themselves do: so they usually mention by the way a word or a term or a phrase which others may not know. Such compact sentences should be diluted a little, especially in the case of a translation into another language.

2. When the jurists write, they usually quote different sources. Their sentences and the quotations are, as a rule, so intermingled that straight and comprehensible translation is often next to impossible. This is what drove Laoust to the

(1) Dâru-l-Kutub (Cairo) Tasawwuf and Akhlâq dîniyya, Nos. 938 and 1349 (see Nashshâr and 'Atiyya's ed. pages ١٠١ و ١٠٢).

(2) Zâhiriyya, adab Manthûr, No. 76 (voir *Le Traité Public...* XLVII).

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(2) Zâhiriyya, adab Manthûr, No. 76 (voir *Le Traité Public...* XLVII).

simplification of such sentences when he made his French translation.

3. The copies at my disposal all had lacunae, and one has, in such cases, to think hard to be able to make head or tail of the sentences, to say nothing of establishing the original text.

To overcome some of my difficulties, I usually insert a word, a phrase or a whole sentence within parentheses where the absence of such insertions would leave the meaning of some portions of the text vague.

In spite of all this effort, I cannot claim that my translation is without faults.

I should like to acknowledge my debt for the help received from Professor and Mrs M.W.M. Welland.

Beirut, October 16, 1966.

Introduction

In the name of Allâh, the Beneficent, the Merciful ⁽¹⁾.

Praise be to Allâh ⁽²⁾ Who sent his messengers with clear arguments, and sent down with them the Book and the measure, that men may conduct themselves with equity, and Who sent down iron wherein is great violence and advantage to men, and that Allâh may know who helps Him and His messengers by faith. Surely Allâh is Strong and Mighty (LVII 25).

And Allâh had the last of His messengers Muhammad, peace be upon him, and sent with him Guidance and the true Religion that He may cause it to prevail over all religions (IX 33). He also aided him with a convincing authority (the Qur'ân) which includes both science (knowledge) and the pen (instruction, teaching) for guidance, conviction and power, in addition to the sword for victory and strength. And I declare that there is no god except Allâh alone, a declaration as sincere and pure as the purity of the element of gold. And I also declare that Muhammad is His Servant and Messenger, peace be upon him and his family and Companions, a further declaration which renders the speaker safe and secure.

This is a short epistle on the principles of Divine Law and prophetic council which neither the ruler nor the ruled can go without. It was necessitated by the demand of one whose

(1) In rendering the Qur'anic Verses into English, I have adopted the Translation of Maulâna Muhammad 'Alî (The Holy Qur'ân, Lahore 1951). References to it appear in the text after the translated Verses thus: (IX 33). Where I have adopted Rodwell's translation (Everyman's Library) or improved on any of them, reference to the Suras will be in small Roman figures, thus: (ix 33).

(2) Allâh is the Islamic name for God of the western writers. Muslim thinkers of to-day have agreed to use "Allâh", because the terms God, god have a pagan origin.

obedience was enjoined by Allâh, in accordance with that which the Prophet, peace be upon him, had related to us ⁽¹⁾; Allâh is pleased to see you comply with three rules: To worship Allâh, [making none a partner to Him]; to hold fast by the covenant of Allâh all together and be not disunited; to be mutually sincere with those to whom Allâh has given authority over you.

Further, this epistle is based on the two Verses concerning the rulers. They read (Qur. IV 58-59): Surely Allâh commands you to make over trusts to those worthy of them, and that when you judge between people, you judge with justice. Surely Allâh admonishes you with what is excellent. Surely Allâh is ever Hearing, Seeing. O you who believe, obey Allâh and obey the Messenger and those in authority from among you; then if you quarrel about anything, refer it to Allâh and the Messenger, if you believe in Allâh and the Last Day. This is best and more likely to (achieve) the end.

The Learned in Religion said that the first Verse was revealed in connection with those in authority: they should make over trust to those worthy of them and that they should administer justice fairly; while the second Verse was revealed with reference to the ruled, in the armies or elsewhere: they should obey those in authority over them who are actually in command in that which concerns the division of booty, the decision on the general policy and in the sending out of expeditions. An exception is made of an order of disobedience to anything Allâh has enjoined. If they disobeyed, then the governing rule would be: "No created (man) should be obeyed in a matter that constitutes a disobedience to the Creator." If they (the ruler and the ruled), on the other hand, did quarrel about anything, they should all refer

(1) Hadîth or Tradition (see footnote on p. 4) is transmitted by a continuous chain from the Prophet to us. If one and the same Hadîth reached us through two different chains of relators, we say: it is related in more than one way.

it to the Book ⁽²⁾ of Allâh (to the principles revealed in the Qur'ân) and the Tradition (Sayings) of the Messenger, peace be upon him. If those in authority did not comply wholly with the orders of Allâh, you should, anyway, obey them in what you deem in accordance with the injunctions of Allâh. To be obedient to them in this restricted form is obedience to Allâh and His Messenger. In this way you would also have made over to them the trusts they are worthy of, as Allâh and His Messenger have enjoined: "And help one another in righteousness and piety, and help not one another in sin and aggression (V 2)." And if this verse of the Qur'ân enjoins the making over of trusts to those worthy of them, as of administering justice in all fairness, then this is the essential principle of equitable policy and good government.

I — Public Functions

The making over of trusts to those worthy of them is of two kinds:

One of them is related to public functions (the exercise of authority) which was the cause of the revelation of the above-mentioned Verse ⁽³⁾. It sub-divides into four chapters.

The right man in the right place:

When the Prophet, peace be upon him, conquered Mecca and received the keys of the Ka'ba ⁽⁴⁾ from Banu Shaiba ⁽⁵⁾ (the

(1) The Book, the Book of Allâh: a book which embodies the Revelation to a prophet. By this term we mean, throughout this work, the Qur'ân. The Qur'ân is the collection of the doctrine, precepts, Laws, etc. revealed by Allâh to Muhammad during his term of mission 13 before Hijra to 11 A.H.

(2) See above, p. 11.

(3) Ka'ba (cube): a cubic building constructed by Ibrahim (Abraham) and his son Ismâ'il in Mecca. Pilgrimage in Islam is undertaken to the Ka'bath (called also: Baitu-l-Lâh — the House of Allâh or al-Baitu-l-'Atiq — the Old House).

(4) Banu Shaiba: the sons of Shaiba Ibn (son of) 'Uthman al-Hajabi to whom the keys of al-Ka'ba were entrusted. This office was religiously and economically important.

former custodians), Al-'Abbās (Muhammad's uncle) asked Mohammad to grant him the custody of the Ka'ba in addition to the right of (selling) drinking water (at the time of pilgrimage, which he already had). The Qur'anic Verse in question was revealed, implying the return of the keys of the Ka'ba to Banu Shaiba. This indicates that anyone carrying out a public function should entrust the affairs of the Muslims to the best Muslim capable of managing these affairs. In this respect the Prophet said: "He who is invested with any affair of the Muslims, and delegates a part of this affair to a man, while at the same time he knows of a better man for this affair of the Muslims, then he is a traitor in the eyes of Allāh and of His Messenger". Another version goes as follows: "He who invests a man with an office in a community, while he knows in this same community a better man for this office, he is a cheater of Allāh, of His Messenger and of the Muslims (in Hakim's ⁽¹⁾ *Sahih*) ⁽²⁾. It is said that this saying is by 'Umar (Ibn al-Khattāb) ⁽³⁾ to his son ⁽⁴⁾, and that 'Umar's son had heard it from his father.

'Umar Ibn al-Khattāb, Allāh blesses him, said: "Anyone invested with an affair of the Muslims, who then delegates a part of that affair to another because of some friendship or relationship, is a cheater of Allāh, of His Messenger and of the Muslims".

It is the duty of the man in office to look for the best of Muslims when he delegates the subordinate offices under him: to his viceroys in the provinces and to representatives in the

(1) Al-Hākim an-Nisābūrī (of the city of Nisābūr, in Persia). He died 405 A.H. He has collected a book of Hadīth (Sayings of the Prophet Muhammad) called *al-Mustadrak alas-Sahihain* (Additions to the *Two Sahih*s of Bukhārī and of Muslim).

(2) *Sahih* (true, authentic): a title of several collections of Hadīth.

(3) 'Umar Ibn al-Khattāb, the second Caliph 13-23 A.H. (634-643 A.D.) after the Prophet.

(4) 'Abdullāh Ibn (the son of) 'Umar Ibn al-Khattāb, a Companion of the Prophet and a very pious man.

administration and the courts of justice, to the commanders of the armies, high and low officers, to the exchequers comprising the vizirs (associates and helpers), to scribes, to accountants and to the collectors of taxes and tithe, and similar incomes of the Muslim state. Everyone of those named above should try to choose his representative and employees from among the best (Muslims) available at his disposal. Even the leaders in prayers, ⁽¹⁾ the callers to prayer ⁽²⁾, the readers ⁽³⁾ (of the Qur'ān), the teachers, the leaders of the pilgrims ⁽⁴⁾ (of the different provinces), the heads of the post offices, those engaged in the intelligence office, the treasurers, guardsmen, the blacksmiths who keep up the gates of the castles and cities, the high and low overseers of the soldiery, the notables of the tribes, the experts of the markets, the "mukhtars" of the villages who are the great land-owners; all these should choose their representatives from among the best (Muslims) at their disposal. None should be invested with an office on the pretext that he had made an early application or that he thinks of himself as fit for it. On the contrary, such people should be excluded from all investiture. It was related in the *Two Sahih*s, ⁽⁵⁾ that a group of men visited

(1) A Muslim may perform his usual prayer alone or in company with his Muslim brothers. Certain prayers, however (On Friday noon, on the days of the two principal feasts), should be said in common. On such occasions a man, appointed by the Caliph or chosen by the congregation, leads in prayers.

(2) The callers to prayers are those who declare with a high voice (usually from a high place) that it is time for prayers (five times per day and night).

(3) The readers of the Qur'ān are those who know the Qur'ān by heart and usually teach it to the people.

(4) Leaders of the pilgrims are those appointed by the Muslim states to go at the head of their subjects to perform the pilgrimage (and take care of the pilgrims).

(5) *Sahih* (collection of authentic Hadīth) formed by Muhammad Ibn Ismā'il al-Bukhārī d. 265 A.H. (879 A.D.) and *Sahih* of Muslim Ibn al-Hajjāj d. 261 A.H. (875 A.D.) of Nisābūr.

the Prophet, peace be upon him, and asked (for one of them) a viceroyalty. He answered: "We do not install in our offices those who ask for them". (On another occasion, the Prophet, peace be upon him) said to 'Abdur-Rahmân Ibn Samurah: ⁽¹⁾ "O 'Abdur-Rahmân, never ask for a viceroyship. If it was given to you unasked for, you will be aided in managing it; but if it was given to you after application, you will be left in it to your fate" (related in the **Two Sahîhs**).

The Prophet, peace be upon him, said also: "He who asks for the position of a judge and makes others intercede in his favour will be left in it to his fate, and he who is (invested in it) without asking for it and without asking others to intercede in his favour, Allâh will send down an angel to direct him in it aright" (related in the **Sunan**) ⁽²⁾.

If the man in authority left the better and the fitter (man) in favour of another because of a relationship between them, or because the other man happened to have emancipated him from slavery or because of friendship, or of being from the same locality, the same denomination, the same way of life, or of the same nationality: Arab, Persian, Turk or Greek, or because of a bribe received in kind or service or for any other cause, or because of a grudge against the more capable man or of an animosity between them; he who does this is a cheater of Allâh, of His Messenger and of the Faithful (Muslims); and he is meant by that which Allâh has said: "O you who believe, be not unfaithful to Allâh and to the Messenger, nor be unfaithful to your trusts, while you know" (VIII 27).

(1) 'Abdur-Rahmân Ibn Samura d. about 50 A.H. (670 A.D.), a Companion who lived in Basra and took part in the conquest of Khurâsân (East Persia).

(2) Sunan (pl. of sunna): way of life. **Sunan** is the title of several collections of Hadîth, the best known of which are the **Sunan** of Ibn Mâja d. 273 A.H. (886 A.D.), of Abû Dâwûd d. 275 A.H.), of at-Tirmidhî (d. 279 A.H.) and of an-Nasâ'î d. 303 A.H. (915 A.D.).

Allâh has also said: "And know that your wealth and your children are a temptation, and that Allâh is He with Whom there is a mighty reward" (VIII 28).

A man might, for love of his child, give preference to a freed man in respect to certain offices, or he might give him sums of money which he did not deserve. In this case this man would be unfaithful to his trusts.

In the same way, a man might prefer one officer to another because he (had received from him) a sum of money which he did not deserve, but he wished to increase his wealth or preserve it intact; or perhaps the officer had been lenient to him in some way. This man is also unfaithful to Allâh, to his Messenger as well as to his trusts.

Moreover, he who makes over the trusts to those worthy of them, though he is at variance with them, will be aided by Allâh: Allâh will preserve him and preserve his wealth and posterity after him. But he who follows his own instinct, Allâh will punish him (and deprive him) of that which he had aimed at: Allâh will humiliate his posterity and annihilate his wealth. In this connection a famous story (is quoted): An Abbasid Caliph once asked a learned man to tell him of a memorable incident which he had witnessed. The learned man said: I have seen (the Umayyad Caliph) 'Umar Ibn 'Abdul-'Azîz ⁽¹⁾ (on his death-bed). Someone said to him: O Prince of the Faithful ⁽²⁾, You have deprived your sons of the great wealth of the state and made them go hungry most of the time, and you will leave them, after you, extremely poor. 'Umar Ibn 'Abdul-'Azîz was then in his last illness. 'Umar said: Let them come in. They did. The sons were more than ten in number and none of them had reached

(1) 'Umar Ibn 'Abdul-'Azîz, the 8th. Umayyad Caliph 99-101 A.H. (717-720 A.D.). He was very pious and very just, unlike any of the Umayyad Caliphs, so historians say that he belongs rather to the Orthodox Caliphs (the four Caliphs who succeeded the Prophet Muhammad).

(2) Prince of the Faithful (Arabic: Amîru-l-Mu'minîn) title of every Caliph beginning with 'Umar Ibn al-Khattâb.

his majority. When he saw them he wept. Then he said: O my sons, I have not deprived you of anything you had a right to, neither was I a man who would deprive others of their goods to give these goods to you. Everyone of you may be a righteous or unrighteous man. If he is righteous, then Allâh will take care of him; if he is unrighteous, I will not leave to him money which he will use in the way of disobedience to Allâh; you may go out! The teller of the story said: I have witnessed some of these sons afterwards, so rich as to be able to furnish one hundred horses to go on the Holy War.

This being the case, while 'Umar Ibn 'Abdul-'Azîz was the Caliph of the Muslims (established in an empire stretching from the remotest East in Turkestan to the remotest West in Spain (and West Africa), and from Cyprus (from the Islands of the Mediterranean Sea) and the Syrian shores and fortifications, Tarsus and other cities (in Asia Minor) to the farthest extremity of Yaman, bequeathed to each of his sons only a trifling share of no more than some twenty dirhams (shillings).

The same learned man told of another Caliph who bequeathed great wealth to his sons. Every son's share amounted to 500,000 dinars (sterling pounds). I witnessed some of them, said the learned man, begging in the streets. Of these kinds of stories and incidents witnessed or retold in the past (we have a great number) all of which call for contemplation by those who possess enough thinking power.

It is indicated by the Traditions related from The Messenger of Allâh, peace be upon him, that viceroyship is a trust that should be fulfilled in the various cases and situations mentioned above. Abû Dharr ⁽¹⁾ (al-Ghifârî), Allâh blesses him, also

(1) Abû Dharr al-Ghifârî d. 32 A.H. (652 A.D.) was a very pious Companion of the Prophet. He censured the young people of 'Uthmân Ibn 'Affân (3rd. Orthodox Caliph) for their indulgence in luxury. 'Uthmân banished him from Medina, the Capital, accusing him of socialistic leanings.

communicated to us from the Prophet, peace be upon him, that viceroyship (in this world) is a trust, as it is on the Last Day a disgrace and regret, unless one has received it in the right way and behaved honourably during his term of office. (related by Muslim).

Bukhâri related too in his *Sahîh*, on the authority of Abû Huraira ⁽¹⁾, Allâh blesses him, that the Prophet, peace be upon him, has said: "If the trust is lost, then the Last Day is at hand". He was asked: "How can it be lost?" He answered: "If the offices were assigned to people not worthy of these offices, then this means that the Last Day is at hand (and that this world is at an end) !"

Muslims are unanimous about this. The guardian of a minor orphan, the custodian of religious domains (Waqf) ⁽²⁾ and the legal representative should administer (the affairs in their trust) to the best of their knowledge and effort. In this respect Allâh said: "And approach not the property of the orphan except in the best manner" (VI 153); he did not say : except in the good manner ! This is so because the viceroy is in the position of a shepherd and the people in that of sheep. The Prophet, peace be upon him, said: "Everyone of you is a shepherd, and everyone of you is responsible for his flock; the Caliph who rules the people is a shepherd, and he is responsible for those whom he governs; the woman is a shepherdess in her husband's house, and she is responsible for the household; the youngster is a shepherd in regard to his father's wealth, and he is responsible for the money at his disposal; the slave is a shepherd as regards his master's possessions, and he is responsible for these possessions. Lo ! Everyone of you is a shepherd, and everyone of you is responsible for his flock" (related in the *Two Sahîhs*).

(1) Abû Huraira d. 59 A.H. (678 A.D.) was a famous Companion who lived with the Prophet for a number of years 7-11 A.H. (628-632 A.D.) and recorded from him a large number of Hadiths.

(2) *Waqf* is land or buildings donated for charitable purposes.

The Prophet, peace be upon him said also: "Any shepherd (ruler) to whom Allâh has entrusted His flock who dies one day, after having cheated his subjects (but without repenting of his faults), Allâh will not allow him to breathe the odour of Paradise" (related by Muslim).

Abû Muslim al-Khawlânî ⁽¹⁾ once entered the audience-chamber of Mu'awiya Ibn Abî Sufyân (the first Umayyad Caliph) and said:

— Peace be upon you ⁽²⁾, O hireling.

The audience asked him to say:

— Peace be upon you, O Prince.

Abu Muslim al-Khawlânî repeated:

— Peace be upon you, O hireling.

The audience said again: say:

— Peace be upon you, O Prince.

Abu Muslim repeated again:

— Peace be upon you, O hireling !

At last Mu'awiya interrupted:

— Leave him, he is better acquainted with what he says.

Abû Muslim explained:

— You are a hireling whom the Lord of these sheep has hired to take care of. So, if you tar the itchy among them, and cure the sick, and put the surplus of the more advanced (richer) at the service of the less advanced (poorer), their Lord will repay you in full. If you, on the contrary, do not tar the itchy, nor cure the sick, nor put the surplus or the more advanced at the service of the less advanced, their Lord will punish you.

This seems very clear, when you come to consider it. The Creatures are the servants of Allâh, and the viceroys represent

(1) Abû Muslim al-Khawlânî d. 62 A.H. (681-682 A.D.) was a Companion, a learned man in jurisprudence and an ascetic. He left Hijâz in the Caliphate of Abû Bakr 11-13 A.H. and settled in Syria.

(2) Peace be upon you (Arabic: As-Salâmu-âlâikum) is the formula of salutation in Islam.

Allâh among his servants; they are the overseers of these servants: they occupy a position similar to that of the two partners in relation to each other; they partake of the function of the viceroy and of the legal representative. When the custodian or the legal representative delegates some of his power to another man, when he could have delegated it to a man more expert in commerce or in the administration of lands and buildings, or when he sells the goods at a low price, and a purchaser willing to pay a higher price is available, then this custodian or legal representative has cheated the man who entrusted him with his affairs. More especially if there was between the custodian and the delegate a friendship or a relationship. The custodian would then hate the appointed delegatee and disdain him and consider that the delegatee has cheated him to do a favour to a relative or a friend of his.

The best man available:

Remembering the previous discussion (we come then, to the conclusion that the head of the state) should choose the best people to hold public offices. Since, however, it is not always possible to find the right man for public office, the head of the State (or of the province etc.) should choose the best man available.

Having thus done his best to choose the best man at his disposal and having assigned to him, suitable functions, he will have discharged his duty honestly. In this respect he will be righteous and honest in the eyes of Allâh. If, on the other hand, there is some bad government not directly connected with him, he will not be guilty of it.

Allâh says in this connection: "So, keep your duty to Allâh as much as you can" (LXIV 16); He says also: "Allâh imposes not on any soul a duty beyond its scope" (II 286). He also says in connection with the Holy war: "Fight then in Allâh's way — thou art not responsible except for thy self, and urge on the believers" (IV 84). He also says: "O you who believe, take care

of your souls, — he who errs cannot harm you when you are in the right way" (V 105).

So, he who does his best in discharging his duty is in the right way; the Prophet, peace be upon him, says: "If I give you an order, fulfil it to the best of your ability" (related in the **Two Sahîhs**).

But if the misgovernment was due to the lack of capacity in the appointed official, while there was no need for him in the office concerned (or for the office at all) or due to disloyalty, he (the employer of the incapable man) will be punished (for the faults of the incapable), since he is responsible for choosing his officials for the public functions under his control.

Investiture in a public function rests on two bases: capacity and loyalty, as Allâh has said: "Surely the best of those that thou canst employ is the strong, the faithful one" (XXVIII 26). Pharaoh ⁽¹⁾ said to Joseph ⁽²⁾: "Surely thou art in our presence to-day dignified, trusted" (XII 54). In describing Gabriel ⁽³⁾ Allâh says: "Surely it is the word of a bountiful Messenger, the possessor of strength, established in the presence of the Lord of the Throne ⁽⁴⁾; (one to be) obeyed and faithful" (LXXXI 19-21). Capacity varies as to the public function intended. Capacity relative to the command on the battle-field, is courage, experience in war affairs and stratagem; then war is (principally) stratagem. It is also ability in the ways of fighting: shooting, spearing, striking with the sword, horsemanship, attack, retreat, etc. Allâh has said: "And make ready for them whatever force you can and have your horse tied at the frontier, to frighten thereby the enemy of Allâh and your enemy" (VIII 60). The

(1) Pharaoh is a title of the ancient kings of Egypt. It is generally used to denote a despot or an aggressive man.

(2) Joseph the son of Jacob.

(3) Gabriel (Arabic: Gibrîl): the Archangel. Revelation is made from Allâh to His messenger-prophets through Gibrîl.

(4) Lord of the Throne: Allâh.

Prophet, peace be upon him, also said: "Learn to shoot and to ride; but I should like more that you be able to shoot than to ride. He who has once learned to shoot, and then forgets about it, does not belong to us"; another version reads: "... is a grace (of Allâh) for which he was ungrateful" (related by Muslim).

Capacity to judge among the people consists in the knowledge of justice according to the Qur'an and the Tradition (of Muhammad), and in the ability to carry out the sentences. There are three requirements in this respect: the fear of Allâh, the upholding of Allâh's commandments at the expense of worldly gain and not to fear men. These are the three characteristics which Allâh required in anyone who filled the office of judge among men as He said in the Qur'an: "So fear not the people but fear Me, and take not a small price for my message ⁽¹⁾. And whoever judges not by what Allâh has revealed, those are the disbelievers" (V 44). Regarding this, the Prophet, peace be upon him, has said: "Of every three judges, two go to Hell and one only enters Paradise: one knew the truth but he gave a verdict contrary to that which he knew, he goes to hell; another judged among the people without knowing the truth (of their dispute), he also goes to hell; and one knew the truth and judged accordingly, he it is who enters Paradise" (related in the Sunan).

The name **judge** applies to anyone who judges between two parties and pronounces a verdict, whether he be a caliph, a king, a viceroy or a provincial ruler, whether he be appointed to judge or be a representative of an appointed judge. Even he who plays the expert among the children as regards the preference of a child's handwriting to another's (is a judge), as the Companions of the Messenger of Allâh, peace be upon them, have mentioned. Truly, this is obvious.

(1) Do not exchange Faith and Obedience of Allâh with worldly prophets.

Capacity and loyalty:

It is rare that we find capacity and loyalty side by side in one person. In this respect, 'Umar Ibn al-Khattâb, Allâh blesses him, has said: "O my Lord, only to Thee I complain of the endurance of the wanton and the incapacity of the trusted". The best man for a public function is the man having special capacity for it. When two men are candidates for the same public function, one of greater loyalty and the other of greater capacity, we choose the one more useful for this public function and less harmful (usually the capable, regardless of his loyalty or his personal behaviour). In the case of the command of a battle, we prefer the strong and brave, though he may be dissolute, to the weak and incapable, though he may be loyal. The Imâm ⁽¹⁾ Ahmad ⁽²⁾ was asked once: who of the two should lead an expedition? The strong and dissolute or the righteous and weakling? Imâm Ahmad said: "In the case of the dissolute and strong, his strength would be at the service of the Muslims, while he alone suffers from his wantonness. The righteous and weakling, on the other hand, enjoys the results of his righteousness, while the Muslims suffer from his weakness. Then, expeditions are preferred to be under the leadership of the strong and wanton." Even the Prophet, peace be upon him, has said: "Allâh would reinforce this Religion (Islam) by (even) the dissolute". In another version: "... by people of no moral standing". Certainly, if the capable was not dissolute he would be preferred to lead a military expedition to the man who is more devoted in the matters of religion but not, in the affairs of war, a substitute for the less righteous.

The Prophet, peace be upon him, used to send expeditions

(1) Imâm: leader, an authority on religious sciences.

(2) Ahmad Ibn Hambal d. 241 A.H. (855 A.D.) : the founder of one of the four principal schools of jurisprudence in Islam. He was inclined more to Hadîth than to opinion (cf. supra.).

under the leadership of Khâlid Ibn al-Walid ⁽¹⁾, ever since Khâlid Ibn al-Walid entered Islam, as he used to say too: "Khâlid is a sword which Allâh has unsheathed against the disbelievers", although on many occasions the Prophet, peace be upon him, disapproved of Khâlid's actions. Once he raised his hands to heaven and complained: "O my Lord, I disclaim before you that which Khâlid has done". That happened when Khâlid was sent to Banu Jadhîma ⁽²⁾; He massacred a great many of them and confiscated much of their possessions unlawfully. The companions who were with Khâlid dissociated themselves from some of his actions. Afterwards, the Prophet, peace be upon him, paid the blood-money of those killed and refunded the amount confiscated by Khâlid. In spite of this, the Prophet, peace be upon him, continued to send expeditions under Khâlid's command because Khâlid was the best man to lead these attacks.

Abû Dharr was more loyal than Khâlid, and in spite of that the Prophet, peace be upon him, said to him once: "O Abû Dharr, I realize that you are weak. I wish to you what I wish to myself. Never try to be an overseer to any two persons, nor try to be a guardian to an orphan" (related by Muslim).

The Prophet forbade Abû Dharr to try to attain to the command (of an expedition) or to the viceroyalty (of a province), because the Prophet knew that Abû Dharr was weak, although it was related (from the Prophet) that neither heaven

(1) Khâlid Ibn al-Walid was one of the military geniuses of the age. He was victorious in every battle he conducted. The Prophet named him 'The sword of Allâh'. But he was considered to be very severe with his men and to take risks in the attacks (No attack of his, however, failed).

(2) Banu Jadhîma were a tribe of northern Arabia to which Khâlid Ibn al-Walid was sent at the head of an expedition to invite them to accept Islam or to fight.

has sheltered nor Earth supported a man more truthful than Abû Dharr.

The Prophet, peace be upon him, chose to place 'Amr Ibn Al-'As ⁽¹⁾ at the head of an expedition to Dhât-as-Salâsil ⁽²⁾, although there were at the time more capable leaders than he. But (since the people in Dhât-as-Salâsil were the relatives of 'Amr Ibn al-'As) the Prophet hoped that they might be won over to Islam without fighting.

He placed, too, the seventeen year old Usâma Ibn Zaid ⁽³⁾ at the head of another expedition (against the Byzantines in Syria) to make the young Usâma stronger in taking revenge on the Byzantines (as Zaid, Usâma's father, was killed on a previous expedition to the same place). The Prophet, peace be upon him, always had a consideration for the positive interest of the Muslims. He preferred to send an expedition under the leadership of a certain man, though there might be in the expeditions men of higher standing in knowledge and faith.

Abû Bakr, too, may Allâh bless him, entrusted Khâlid Ibn al-Walid, in spite of his many faults, with expeditions during

- (1) 'Amr Ibn al-'As was a genial commander, statesman and administrator. He conquered districts in Palestine, and Egypt, and was the 'Amil (collector) in Egypt for a long time. He threw in his lot with Mu'âwiya against 'Ali Ibn Abi Tâlib. He died in 43 A.H. (663 A.D.).
- (2) Dhât as-Salâsil is a place on the frontiers between Arabia and Syria. An expedition was sent under 'Amr Ibn al-'As in the year 8 A.H. (629 A.D.).
- (3) Usâma Ibn Zaid was a young man when the Prophet sent him at the head of an expedition to Syria. He attacked the Balqâ' (in Jordan). This expedition was the first outside of Arabia 11 A.H. (632 A.D.), an indication that the Prophet had planned to propagate Islam outside Arabia.

the ridda ⁽¹⁾ wars, and the conquest of Iraq (and Syria). Abû Bakr later deposed Khâlid when he heard that Khâlid was personally involved in those mistakes. He blamed him for these, though he realized that there was more good than harm in Khâlid's leadership of the armies. Furthermore, Khâlid was irreplaceable in this function. This attitude emphasizes a definite thought : when the highest officer is inclined towards kindness, his representative should have some inclination towards severity. Equally true would be : when the highest officer is of a stern character, his representative should be lenient, so that an equilibrium in their treatment of subordinates will be established.

This explains the fact that Abû Bakr, may Allâh bless him, preferred to send the expeditions under the leadership of Khâlid, while 'Umar Ibn al-Khattâb (being stern by nature) chose (when he came to the Caliphate) to depose Khâlid from the command-in-chief and to appoint in his stead (the lenient) Abû 'Ubaida 'Amir Ibn al-Jarrâh, may Allâh bless him. To note: Khâlid was stern like 'Umar Ibn al-Khattâb, and Abû 'Ubaida was lenient like Abû Bakr. The best thing, therefore, was that every Caliph had appointed as his commander-in-chief of the army the man that would be moderate in the general policy of the state. This was also in the spirit of the Prophet, peace be upon him, who has said on various occasions: "I am the Prophet of mercy, I am the Prophet of fighting... I am the smiling warrior."

The nation of the Prophet Muhammad is also a nation not inclined to either extreme. Allâh has said: "Muhammad is the Messenger of Allâh, and those with him are firm of

- (1) Ridda. After the death of the Prophet, certain Arabian tribes revolted against the central authority of Medina and refused to send their sadaqât (taxes) to the treasury of the state. This is called ridda (renegation), because sadaqât (zakât- alms, taxes imposed by Islam) is a cardinal point of belief. Refusing to pay zakât amounts practically to ridda (return) to paganism and fall from Islam.

heart against the disbelievers, but compassionate among themselves. Thou seest them bowing down, prostrating themselves, seeking Allâh's grace and pleasure" (XLVIII 29): Allâh has said of the same attitude of the Muslims contemporary with the Prophet: "Humble towards believers, mighty against the disbelievers" (V 54).

So, when Abû Bakr and 'Umar came in their turns to the Caliphate, each attained perfection (by the fact that his commander-in-chief of the army was his complement of moderation). Leniency was an attribute of Abû Bakr during the life time of the Prophet, and sternness was ascribed to 'Umar Ibn al-Khattâb; so that the Prophet has said regarding them both: "Follow the example of these two who will come after me: Abû Bakr and 'Umar!".

Abû Bakr, on the other hand, showed great courage in fighting the *ridda* people (in Arabia) and the others (outside Arabia), a quality in which he even surpassed, 'Umar and the other Companions of the Prophet, may Allâh bless them all."

If the need for loyalty in viceroyalty was more urgent, the loyal would be preferred in the case of the exchequer, for instance, but collecting the dues and guarding them need both strength and loyalty. A strong and energetic tax-gatherer is needed to collect the dues, and a loyal scribe, known for his experience and honesty, (is likewise needed) to keep these collected dues.

The same is true of leadership in war. If the Caliph held a council with the men of knowledge and piety, he would unite the advantages of science and religion. The same applies to other public functions. If one man only cannot ensure efficiency, several men should work on the problems. Thus, either the best man for the job must be chosen, or several men should be appointed to the same office. When we come to the position of judge, our first choice should be one who is more versed in law than in religion, in other words, the more able. When we have two candidates, one more versed in law and the other

in religion, we should prefer the more religious, provided that the cases to be judged are clear and straightforward. On the other hand, if the cases to be judged (by him) are more obscure and of an equivocatory nature, then we should prefer the more versed in law. It is related from the Prophet, peace be upon him, that Allâh likes discernment when doubts arise, and He likes the power of reason when passions accumulate. Consequently, for the position of judge, providing he has the support of the chief of police or the people generally, the more versed in law and the more pious are preferred. But if the judge is in more need of strength and support than of knowledge and piety, then the more capable is preferred. Otherwise, the art of judging needs one who is learned and just. It requires not only a capable man (but one of knowledge and piety).

In the same way every Muslim appointed to a position (should possess these three qualities). If one of these is lacking then there is trouble.

Authority is maintained either by a strong ruler, ruling by fear, or by a benevolent ruler and agreement (on the part of the ruled). In fact, both ways are needed (to suit certain situations).

A learned man was once asked: if the position of the judge could be filled only by one who is versed in the law but at the same time wanton, or by one who is ignorant but pious, whom of the two should be preferred? He replied: if the need was more for the pious because of the prevailing corruption, then the pious is preferred; if the need for knowledge was greater because of difficulty and complication in the cases (to be examined by the judge), then the versed in the law is preferred.

Most of the learned men prefer the pious, since the great heads of the schools of law are unanimous that the man who is to fill the position of judge should be equitable and praiseworthy. They are at variance, however, as regards knowledge: should he be jurist or of the laity (and be satisfied with copying other learned people in matters of religion)? Or should

we appoint to the position of judge the best available man at our disposal? There are three possibilities in solving this problem, but the discussion of this problem comes at a later stage of this book.

Although the incapable may be invested (as judge), when necessity calls for him — when he is the best man available — we should strive to improve the conditions. In this way we may offer the people the possibility of a reform necessary in state and provincial affairs etc. The debtor also should try to settle all his debts, though he is not required to do so but to pay that part which he is able to pay or in following an example in the case of preparation for Holy war: one is called upon to make preparations of all kinds, of force and of horses, though he may be at the time unable to do so. Every man should try to do his best; although he may be limited by his ability, it is still his duty to perform his obligation in full. In the question of pilgrimage (to Mekka) the matter is different: a Muslim is not required to go on a pilgrimage unless he is able.

How to choose the best?

What is important in this chapter is to know how to choose the best (man for the office). This is usually attained by knowing the aim of the public function and the way to achieve that aim. So, if we know the aims and the means, the matter is easy to accomplish. Since most of the kings aim at worldly interests, not at those urged by Religion, the (kings) employ in their kingdoms those (people) who may help them in attaining these (worldly) aims. Every one who seeks authority for himself employs those who may support his authority. The customary tradition was that he who used to lead the Muslims in the Friday prayer and in the other prayers in common and deliver the sermon (on Friday), was the man usually appointed to lead the Muslims in the battles, as these were the representatives of the Caliphs in the armies. When the Prophet, peace be upon him, ordered (in his last sickness) that Abû Bakr should lead the Muslims in prayers (in his stead), the Muslims accepted

Abû Bakr as the leader in war and in another dignity (as Caliph). And whenever a man was sent by the Prophet, peace be upon him, on an expedition, that man was to lead his men in prayer. Also when one was appointed a governor of a city, as in the case of 'Attâb Ibn Asîd ⁽¹⁾ who was appointed governor of Mekka and the case of 'Uthman Ibn al-'As ⁽²⁾ who was appointed governor of Tâ'if, and in the cases of 'Ali (Ibn Abî Tâlib ⁽³⁾), Mu'âdh (Ibn Jabal) ⁽⁴⁾, Abu Mûsâ (al-Ash'ari) and 'Amr Ibn Hazm appointed in Najrân (Yaman), these representatives of the Prophet in their respective viceroalties led the Muslims in prayers, administered justice and discharged the other duties which a commander-in-chief had usually done. This is what the four Orthodox Caliphs, who succeeded the Prophet did, as did the Umayyad Caliphs later and some of the Abbasid Caliphs. They did so because in Religion the most important matters are prayer and holy war. Any time the Prophet paid a visit to the sick, he used to pray thus: O my Lord, restore the health of your servant that he may attend your prayer and defeat an enemy of yours.

When the Prophet sent Mu'âdh to Yaman (as judge) he said to him: "O Mu'âdh, the most important matter, in my eyes, is prayer". 'Umar Ibn al-Khattâb, may Allâh bless him, also used to write to his viceroys: "The most important of your duties, in my eyes, is prayer. He who performs prayer at its

- (1) 'Attâb Ibn Asîd was a governor of Mecca at the time of the Prophet Muhammad.
- (2) 'Uthmân Ibn al-'As d. 50 A.H. (670 A.D.) was a governor of Tâ'if (east of Mecca) at the time of the Prophet Muhammad and during the Caliphate of Abû Bakr and 'Umar.
- (3) 'Ali Ibn Abî Tâlib, cousin of the Prophet Muhammad, was one of the very early Muslims; he embraced Islam at the age of ten. He married Fâtima (Muhammad's daughter). He was a learned man and an able speaker and very brave. He was the fourth Orthodox Caliph 35-40 A.H. (656-660 A.D.).
- (4) Mu'âdh Ibn Jabal d. 18 A.H. (639 A.D.) was appointed by the Prophet as governor of Yaman and *cadi* (judge).

prescribed times and preserves it (does not neglect performing it) he preserves his Religion; and he who neglects it will be more negligent in his other matters of life. The Prophet, peace be upon him, has said: "Prayer is the pillar of Religion," if the man in the public function performs his prayer and continues, it keeps him away from indecency and evil. Prayer helps man to perform his other (religious) duties, as Allâh has said: "Fortify yourselves with patience and prayer, and this is hard except for those who fear Allâh" (II 45); He also has said: "O you who believe, fortify yourselves with patience and prayer; surely Allâh is with the patient" (II 153); He was spoken to his Prophet: "And enjoin prayer on thy people, and steadily adhere to it. We ask not of thee a sustenance. We provide for thee. And the good end is guarding against evil" (XX 132). Allâh said too: "And I have not created the jinn and the men except that they should serve me; I desire no sustenance from them, nor do I desire that they should feed Me. Surely Allâh is the Bestower of sustenance, the Lord of Power, the Strong" (LI 56-8).

The aim of the public functions is to try to reform the religious life of the people, otherwise they (the people) would be at a great loss, and would not benefit by what they may enjoy in this world. Also, a reformation of the worldly affairs is necessary for the establishment of the Religion. The discharge of a public function is two-sided: to divide the sums (provided by the state or won on the battle-field) among those to whom the sums are due, and to punish the aggressors. He who does not transgress the limits (between good and evil, set by Allâh), his worldly and lay conditions will be improved (by Allâh). In this respect, 'Umar Ibn al-Khattâb used to declare: "I send my viceroys to you to teach you (the regulations set in) the Book of your Lord and (in the) Hadîth (Tradition, Sayings) of Allâh's Messenger, and to make you behave according to the injunctions of your Religion."

When the people have gone one way and their rulers

another, there arises a contradictory situation. But, if the ruler does his best to improve both the religious and civil conditions of his subjects, he will be one of the noblest of his time and amongst the best of those who strive hard in the cause of Allâh.

It has been related (from the Prophet): "One day in office of a just ruler is better than sixty years of worship". In the **Musnad** ⁽¹⁾ of Ahmad, it is related from the Prophet, peace be upon him: "The most beloved in the eyes of Allâh is the just ruler, and the most hateful in His eyes is the unjust ruler". It is also related by Abû Huraira, in the Two Sahîhs, that the Messenger of Allâh, peace be upon him, said: "Seven people will be sheltered on a day when there is no other shelter than His: a just ruler, a young man brought up attached to Allâh in worship, a man whose heart is captured by the mosque from the moment he leaves it to the moment he returns to it, two men united in friendship for the sake of Allâh — they began like this and they will part like this —, a man who remembers Allâh when alone and weeps, a man whom a woman of a social position and of beauty calls to herself — would say: I refrain, because I fear Allâh the Lord of the worlds and, lastly, a man who gives alms secretly so that his left hand does not know what his right hand does." (These are those who deserve shelter).

It is too in the **Sahîh** of Muslim, related by 'Iyâd Ibn Hammâd ⁽²⁾, may Allâh bless him, that the Messenger of Allâh, peace be upon him, said: "The people of Paradise are (of) three (categories): a just ruler, a man good-natured towards every relative and every Muslim, and a man who is rich, chaste and charitable". In the **Sunan** also, it is related from the Prophet, peace be upon him, that he who gives alms (or strives

(1) **Musnad** is a collection of Hadîth compiled by Ahmad Ibn Hanbal.

(2) 'Iyâd Ibn Hammâd was a Companion of the Prophet.

to make others give alms) in the right way is like him who goes to war in the cause of Allâh.

When Allâh ordered (the Muslims) to go on holy war, He said: "And fight therefore against them until there be no civil discord, and the only worship be that of Allâh". Once it was said to the Prophet, peace be upon him: O Messenger of Allâh, a man fights (sometimes) out of bravery, out of sincere defence (of his people or his goods) or (simply) to be seen by men — who of these is a fighter in the cause of Allâh? He answered: "He who fights to make the word of Allâh the most exalted is he who fights in the cause of Allâh" (related in the *Two Sahîhs*).

The (real) aim (of the men in office) is that Religion be solely Allâh's (i.e. Islam) and the word of Allâh be uppermost. The word of Allâh is a generic name for all Allâh's word, in His Book (in the Qur'ân). So He has said: "We have sent our apostles with clear tokens, and we have caused the Book and the balance to descend with them, that men might observe fairness" (LVII 25). So, the aim of sending messengers and revealing Books (to them) is to enable men to be fair in performing the duties due to Allâh and those due to His creatures. Then Allâh resumed: "And we have sent down IRON, wherein is great violence, as well as advantages to mankind, and that Allâh may know who helps Him and His messengers, out of pure faith (LVII 25). He who deviates from the (injunctions of the) Book (the Qur'ân) will be corrected with iron (the sword)." It is for this that the preservation of Religion is effected with the Book and the sword; it is related from Jâbir Ibn 'Abdullâh ⁽¹⁾, may Allâh bless him, that the Messenger of Allâh enjoined us to strike with this (i.e. the sword) him who deviates from this (i.e. the Qur'ân). If this was really intended (from the men in office) we should then make use of the man nearest, to fulfil

(1) Jâbir Ibn 'Abdullâh was a companion of the Prophet and a known jurist. He died early in the Umayyad period.

the required condition in the intended office: if the office was, for instance, to lead in prayer only, we would follow, in choosing him, the example of the Messenger of Allâh, peace be upon him, as formulated in his Saying: "The leader in prayer should be he who is best versed in the reading of the Qur'ân; if there were several at the same level, in this respect, then the best versed in the Tradition (Sayings) of the Messenger of Allâh; if there were several, in this respect too, on the same level, then the leader should be he who had made his migration from Mecca to Medina earlier; if of these there were also several, then the leader in prayer should be the eldest among them. No one may proceed to lead in prayer in the presence of the man of authority, nor may one take the place of honour (sit on his chair or throne) except with his permission" (related by Muslim).

If two men were of the same calibre or if it was not known which of them was more meritorious, then we resort to drawing lots, as did Sa'd Ibn Abî Waqqâs ⁽¹⁾ on the day (in the battle) of Qadisiyyah, when (several people) disputed the office of the "Caller to Prayer". Sa'd acted in accordance with a Saying of the Prophet, peace be upon him: "If the people only knew the degree of merit in calling (the faithful) to prayer and in (coming early to the mosque to sit in the) first rank, without being able to determine which deserves either place, except by drawing lots, they should draw lots": So, if naming someone for an office was done according to the explicit injunction of Allâh, or on the responsibility of the higher officer, by drawing lots when the case at hand is ambiguous, the higher officer would have fulfilled his duty equitably.

(1) Sa'd Ibn Abî Waqqâs d. 55 A.H. (675 A.D.) was a Companion of the Prophet and a very able commander. He was the conqueror of Irâq and Persia.

II — State Revenues

The second aspect of trusts (discussed in Chapter One) concerns goods, as has Allâh said: "But if one of you trust the other, let him who is trusted restore what he is trusted with, and fear Allâh his Lord" (II 283).

What is understood by goods.

By goods we understand here various things: private debts, public debts, as, for instance, the handing over of deposits, the share of a partner, the goods of the employer, of the sleeping partner, of the orphan and of charitable foundations (waqf) entrusted to a guardian and the like; included also are settlement of debts proceeding from sales (entrusted to some one) or due on a loan, or dowry (after separation or death of the husband), of the payment for services, etc. Allâh has said in this respect: "Surely man is created impatient — fearful when evil afflicts him, and niggardly when good befalls him — except those who pray, who are constant at their prayer, and in whose wealth the beggar has a prescriptive right and the destitute ... and those who are faithful to their trusts and their covenant" (LXX 19ff.). Allâh has also said: "Surely we have revealed the Book to thee with truth that thou mayest judge among people by means of what Allâh has taught thee. And be not one pleading the cause of the dishonest" (IV 105); i.e. do not defend their cases. The Prophet, peace be upon him, has also said: "Restore the trust to him who had entrusted you with it, and do not cheat even the man who cheated you."

The Prophet, peace be upon him, has said further: "The faithful is he whom the Muslims trust with their blood (lives) and goods; and the Muslim is he from whose tongue and hand the Muslims are safe; the migrant ⁽¹⁾ is he who forsakes what

(1) Migrant (Arabic: Muhâjir) is a term which denoted an inhabitant of Mecca who embraced Islam and then left Mecca for Medina to live with the Muslims (before the conquest of Mecca by Muhammad, 8 A.H.). It is applied too to the man who repents and becomes pious.

Allâh has forbidden; and the fighter in the cause of Allâh is he whose only aim is the triumph of the cause of Allâh." This is an authentic Hadîth (Sayings of the Prophet), partly cited in the **Two Sahîhs**, partly in the **Sunan** of Tirmidhî ⁽¹⁾. Also the Prophet, peace be upon him, has said: "He who borrows things from others with the intention to restore them (to their owners), Allâh restores these things (enables the borrower to restore them), and he who borrows things with the intention of destroying them (uses them as if they were his own), Allâh will destroy him" (related by Bukhârî).

And if Allâh has enjoined that trusts received in the right and regular way should be restored, his injunction to this effect implies that recompense should be made for confiscated goods, thefts, frauds and similar forms of extortion too. A loan should similarly be restored. In his farewell Sermon, the Prophet, peace be upon him, said: "A loan is to be restored, a gift to be reciprocated, the debt to be settled and the guarantor is responsible (for the trusts, if the entrusted fails to restore the things entrusted unto him)... Allâh has assigned to every one entitled to a right his share of that right. And a will to an heir is therefore invalid."

This section of the chapter applies to both the ruler and the ruled: everyone should render unto the other that which the other has a right to. The sovereign is bound, as well as his representatives, in the matter of regular donations from the treasury ⁽²⁾, to give everyone the sum he has a right to. The collectors and the scribes should also render to the sovereign all the sums collected. Also, the subjects should pay

(1) Muhammad Ibn 'Isâ at-Tirmidhî d. 279 A.H. (893 A.D.) was a famous compiler of Hadîth.

(2) Treasury (Arabic: **Baitu-l-mâl**, house of wealth). The expenses of the state and the social aids were all defrayed by the Muslim treasury of state.

the dues on their taxable goods and accumulated money to the treasury (directly or through the collectors). On the other hand, the subject should not demand from the sovereign or his representatives sums of money to which they have no right. Otherwise, they would be in the same category with those of whom Allâh has said: "Some of them also defame thee in regard to alms-giving; yet if a share be given to them, they are content; but if no share be given them, behold, they are angry! And if they were content with that, which Allâh and His Messenger gave them, and had said: Allâh is sufficient for us; Allâh will soon give us (more) of His grace and His Messenger too; surely to Allâh we make petition. *Zakât*-alms⁽¹⁾ are only to be given to the poor and the needy, and those employed to administer it, and to those whose hearts are won (to Islam), and in order to (free) the captives, and those in debt, and for the sake (— in the cause) of Allâh and for the wayfarer (cut off from his wealth at home) — an ordinance from Allâh. And Allâh is Knowing, Wise." (IX 58 ff.).

Nor should they refrain from handing over the dues on their goods and their accumulated wealth to the (treasury of the state), even though the sovereign of the time may be unjust. The Prophet made once mention of the injustice of a ruler and added: "Pay to them what is their right; Allâh will call them to account for everything He has entrusted to them." It is related in the *Two Sahîhs*, through Abû Huraira, may Allâh bless him, from the Prophet, peace be upon him, that Banu Israel (the Jews) were governed by prophets; every time a prophet died, another prophet succeeded him; but after Muhammad there will be no other prophet. There will be Caliphs (successors), and a number of them. The people asked (the Prophet Muhammad): What would you order us to do? He answered: "Make your

(1) *Zakât*-alms is a tax, levied by the Islamic state on all accumulated forms of wealth at the rate of two and a half per cent. per year.

allegiance to them in the order of their succession, then give them the dues they have a right to; it is Allâh who will call them to account for that which He has entrusted to them."

And in the *Two Sahîhs* also, it is related through Ibn Mas'ud⁽¹⁾ from the Prophet, peace be upon him: "You will witness, after me, much greed and numerous actions of which you will disapprove." "What do you order us, then, O Messenger of Allâh?" they asked, He said: "Give them that which is their right, and ask of Allâh that which is your right!"

The financial administrators should not also redistribute the *Zakât*-alms according to their own desire, as the owner of a sum of money would do. They are only trustees and representatives (of the authority) and not owners. In this connection the Prophet, peace be upon him, has said: "By Allâh, I neither give to anybody nor deprive anybody; I am but a distributor: I render things where I am ordered (by Allâh)" (quoted by Bukhârî; Abû Huraira has quoted a similar Saying).

The Messenger of the Lord of the worlds has himself told that giving and depriving are not made dependent on his will nor according to his choosing, as would an owner who is left free to dispose of his own possessions in the manner he chooses; or as kings usually do: give much to anyone they like and naught to anyone they hate. The Messenger is only a servant of Allâh, he divides things (among the Muslims) according to the injunction of Allâh, disposing of everything where Allâh has ordered him.

A similar example occurs with 'Umar Ibn al-Khattâb. A man asked him once: "Why do you not, O Prince of the Faithful,

(1) Abdullâh Ibn Mas'ûd d. about 32 A.H. (653 A.D.) was one of the earliest to embrace Islam and the best reader of the Qur'ân (who could recite it correctly, knowing the meaning of the different Verses and the causes of their revelation). He was also versed in the science of Hadîth and of jurisprudence.

spend more liberally on yourself, from Allâh's treasure at your disposal?" 'Umar asked the man: "Do you know what I (as a Caliph) and they (the subjects, community) can be compared with? We are like a party of travellers, the members of which collected some money and entrusted it to one of them to pay for the expenses of the journey. Should he appropriate any part of that money for himself?"

On another occasion, a big sum of money constituting one fifth of the booty (from a certain land) was brought before 'Umar Ibn al-Khattâb, may Allâh bless him. He remarked: "The people who have paid their dues in this manner are really trustworthy!" One of the audience replied: "You have fulfilled your duties toward Allâh honestly, and they have likewise fulfilled theirs toward you. Had you taken liberties, they would have done likewise!"

It is agreed that the (courts of the) rulers are likened to market-places; the commodities that sell best are brought thereto. As 'Umar Ibn 'Abdul-'Azîz has said: If truthfulness, piety, justice and honesty are then in demand, these are brought thereto. If, on the contrary, lying, wickedness, injustice and treachery are in demand, then these would be brought thereto. The duty of the man in office is to receive the money (due to the state) in a right manner, to redistribute it among those having a right to it and not to refuse any man his lawful share. Whenever 'Alî Ibn Abî Tâlib knew of an official who oppressed the subjects, he usually reiterated: "O my Lord, I have never ordered them (the officials) to oppress Thy creatures nor to slight Thy right!"

Kinds of official revenues: the booty.

Official revenues, as mentioned in the Qur'ân and in the Sayings of the Prophet, are of three kinds: booty, **Zakât**-alms and revenues from conquered lands.

Booty is the movable possessions won from the infidels on the battle-field. Allâh has mentioned it in Sura VIII, the

Anfâl, revealed during the battle of Badr ⁽¹⁾. Allâh named it **Anfâl** because it made an increase in the wealth of the Muslims. He says: "And know that whatever you acquire in war, a fifth of it is for Allâh and the Messenger and for the next of kin and the orphans and the needy and the wayfarer..." (VIII 41). Allâh also has said: "Eat therefore of the spoils you have taken what is lawful and good; and fear Allâh: Allâh is Gracious, Merciful" (viii 70).

In the **Two Sahîhs** it is related by Jâbir Ibn 'Abdullâh, may Allâh bless him, that the Prophet, peace be upon him, has said: "I have been granted five things that never belonged to any prophet before me: I was given victory by terror (seizing the enemy) from (a distance of) a month's (march); the whole Earth was rendered to me holy: clean to perform prayer anywhere on it, so wherever the time of prayer overtakes any of my followers, let him pray there; booty was made lawful to me, and to none was it so before me; I was granted intercession (on the Day of Judgement) and a prophet has always been sent to his particular people, I am sent to all Mankind". The Prophet, peace be upon him, has also said: "I am sent with the sword (in hand) a short time before the Last Day, so that Allâh alone — who has no partner — may be worshipped; my livelihood is in the shadow of my spear (I earn my living by means of my spear); humiliation and shame are the lot of those who oppose me. And he who imitates a people belongs to them" (quoted by Ahmad Ibn Hanbal, in his **Musnad**, on the authority of 'Abdullâh Ibn 'Umar; quoted also by Bukhârî).

Booty should be divided into five parts, one part of which should go to those whom Allâh has enumerated (in the Qur'ân); the other four parts should be subdivided among the victorious (who remain alive after the battle). 'Umar Ibn al-

(1) Badr is a well at a distance from Medina. Near it a battle was fought 2 A.H. (62 4A.D.) between the Muslims and the Meccans (who were still pagans). It was the first battle in Islam and one of the outstanding victories.

Khattâb has said: "Booty is for those who go on an expedition and witness the fighting, whether they themselves (actually) fought or not".

The subdivision (of the four fifths of the booty) among the living warriors (after the battle) should be effected fairly, no one should be preferred because of his high position, noble birth or even personal merit. Subdivision should follow, in this matter, the example of the Prophet, peace be upon him, and of his (four) Caliphs (his successors). It is stated in *Sahih* of Bukhârî that Sa'd Ibn Abî Waqqâs, may Allâh bless him, realized that he was of a higher merit (and a better warrior in battle, and so he asked for a larger share of the booty). The Prophet, peace be upon him, remarked: "Are you granted victory and a livelihood except for the sake of those who are weak among you?" Another version is given in the *Musnad* of Ahmad. Sa'd Ibn Abî Waqqâs himself reported that once he said to the Prophet: "O Messenger of Allâh, a man would be stationed as a guard (in the rear of the camp), is it fair that his share be equal to another (who fought the battle through)?" The Prophet answered: "Bereft may be thy mother, O Sa'd, are you granted victory and livelihood except for the sake of the weak among you?"

The booty continued to be subdivided among the victors, during the Umayyad and the Abbasid Caliphates, and also, when the Muslims used to lead their expeditions into the lands of the Byzantines, of the Turks and of the Berbers (still heathen at the time). But the Caliph was, in principle, permitted to increase the share of him who had fought the enemy with greater courage and force as in the case, for instance, of a detachment commissioned with a special errand, of a man who climbed into a fortress and caused it to be taken by surprise, or a man who rushed at the commander of the enemy and killed him and caused the whole army of the enemy to be defeated. The Prophet, peace be upon him, and his immediate successors had granted larger shares of the booty to such warriors.

The Prophet used to grant a (commission) portion, one fourth (of the remaining four fifths of the booty) at the first attack; at the second attack one third thereof was granted. This is the *nafl*, the extra share of the distinguished warriors.

Certain jurists affirm that this *nafl* should be deducted from the fifth. Others said that it should be taken from the fifth of the fifth (assigned to the warriors) lest the share of some warrior be much greater than that of the others. In fact, it may be taken from the four remaining fifths even though it may lead to a preference in the case of someone. (This is permissible) if it was in the religious interest (of the Muslims), as did the Prophet, peace be upon him, and not out of personal desire. Similar are the opinions of the jurists of Syria, of Abû Hanîfa ⁽¹⁾ and Ahmad Ibn Hanbal (of Iraq) and of still others... The following examples may be cited: the commander may say: he who points to me (the way to) a fortress will be granted such a sum; he who comes back with the head (of an enemy) will be granted so and so, etc. These are two opinions expressed by Ahmad Ibn Hanbal and others.

An authentic Saying of the Prophet authorizes the Caliph to give special awards (in order to encourage the soldiers to distinguish themselves). He might say: "He who acquires a thing (in war) may retain it", as did the Prophet during the Battle of Badr, if he judged the result to be of more good than evil.

If the Caliph undertook the collection of booty to redistribute it, no one should appropriate anything of it, in a special

(1) Abû Hanîfa d. 150 A.H. (768 A.D.) was one of the greatest jurists. He depended very much on opinion: if a case was not explicitly provided for in the Qur'ân or in the Hadith, he used to judge it by its intrinsic use for the community. He also said: If the inhabitants of a province had agreed on a social arrangement not foreseen by the Islamic Law (and not contrary to any of the precepts of Islam), this social arrangement should be considered as valid.

way, then "he who shall defraud, shall be faced with his fraud on the day of Resurrection" (iii 155). Defrauding is treachery.

Nor is looting allowed; the Prophet, peace be upon him, has forbidden it. If the Imâm (the Caliph when on the expedition, or the commander of the expedition) decides not to collect the booty and redistribute it himself, but instead gives permission to the warriors to take their shares of the booty by themselves, appropriation carried out in this way is lawful. Therefore, any warrior who appropriates anything, according to this, without violence, has a right to it provided it is calculated out of the four remaining fifths which belong to the warriors.

On the other hand, if the Imâm ⁽¹⁾, gives permission for such an arrangement, but not in the spirit of the law, a warrior may then appropriate only a part of the booty which he considers equal to his rightful share if the booty had been divided in the traditional way.

Those who hold that the (individual) Muslims may not collect the booty (independently), but only the Imâm has this right, are diametrically opposed to those who allow independent action. The religion of Allâh, however, advocates the golden mean.

Justice in subdividing the four fifths of the booty among the warriors (still alive after the battle) allows one share to the foot-soldier and three shares to the knight riding a horse of Arab breed: one share to the knight himself and two to his horse, as did the Prophet, peace be upon him, in the year of (the battle) Khaibar ⁽²⁾.

Certain other jurists maintain that the knight has a right to only two shares, but the previous opinion is the

(1) Imâm: leader in prayer, versed in the religious sciences; also the Caliph (head of the state).

(2) Khaibar is an agricultural district north of Medina. It was populated chiefly by Jews who were hostile to Muhammad, personally, and to Islam. The Prophet marched on Khaibar, conquered it 7 A.H. (969 A.D.) and expelled its inhabitants.

one that the authentic Sunna (action of the Prophet) has plainly indicated, that the horse is in need of provision and of a groom. Further, one knight is of more value in war than two foot-soldiers. Others say, in this respect, that an Arabian horse and a horse of cross-breed are entitled to the same share; others assert that a cross-breed horse is allowed only one share, as was related of the Prophet, peace be upon him, and of his Companions. A cross-breed horse (by the way) is a horse of which the mother is **nabatiyyah** (bred in the cultivated lands, not in the desert) and is named **birdhawn** (used usually for riding in the city and in processions) or, as some people call it, **Tatary** (Tartarian, Mongolian), whether he be a stallion or a gelding. It is also called **ikdish** (daught-horse) or **ramaka** (the female of the horse, intended principally for breeding), which is the **hijr** (the mare, the female of the horse). Our ancestors used the stallion for fighting, because of its strength and fury; for surprise-attacks and night raids they used the **hijr**, because it has no neigh which might warn the enemy and cause him to guard against the attack; for the long march they used the geldings which are more enduring in travel.

If the booty was a property (whether a movable or immovable possession) which once belonged to a Muslim and if, before redistribution, this is recognized and the owner is known, it must be returned to its owner. All Muslims are agreed on that.

The various regulations for the subdivision of the booty are governed by numerous Sayings of the Prophet and various opinions of the Muslim experts of jurisprudence. The Muslims are in agreement regarding some of them and at variance regarding others.

The Zakât-alms.

The **sadaqât** or **zakât**-alms should go to those whom Allâh has named in His Book (the Qur'ân). It is related that a man asked the Prophet, peace be upon him, something about **sadaqa**. The Prophet said: "Allâh has not accepted any system

for the distribution of **sadaqa** whether devised by a prophet or another man; but He divided it into eight parts (which should correspond to eight classes of people). If you belong to any of these classes, I would give you alms. The classes are the following:

1 and 2: The poor and the needy, by whom we mean those whose income falls short of the (minimum) sum necessary to sustain them. Rich people and able-bodied individuals capable of earning a living are not entitled to a share of **sadaqa**.

3: The administrators of the **sadaqa**, or those who are employed in collecting it, guarding it and distributing it, and so on.

4: Those whose hearts are to be won to Islam (we shall mention them fully in the chapter on **fay'**).

5: Those in captivity or in slavery. They may be given a share of **sadaqa** to pay for their ransom or for their emancipation from slavery. This is the opinion generally agreed upon.

6: The debtors: those who are in debt and are unable to settle their debts. They may be given a share of **sadaqa** equivalent to the sum of their debts, no matter how large it is; provided that their debt was not contracted as a result of a behaviour contrary to the precepts of Islam (as a result of gambling, for instance).

7: Those who strive in the cause of Allâh. The warriors who are not given enough money from the public treasury to equip themselves with, have a right to a share of **sadaqa** transferred to them. They may be given the whole sum they need to go to war or the sum still needed by them to do so. This sum may comprise the stallion, the arms, the pension and the personal fee. Pilgrimage to Mecca, as has said the Prophet, peace be upon him, may be considered as an item in this charitable contribution (a poor man wanting to perform his pilgrimage may be helped with a sum from the money of **sadaqa**).

8: The wayfarer who while passing through a country (falls short of money).

The **fay'**-revenues from conquered lands.

The **fay'** is fundamentally a source of public revenue described in Sura LIX (al-Hashr) revealed in connection with the expedition against the Jews of Banu an-Nadîr, after the battle of Badr. Allâh said: "Whatever Allâh has restored to His Messenger from them (from the Jews), you did not protest against it nor fought it with horses or camels, but Allâh gives authority to His Messengers against whom He pleases. And Allâh is possessor of power over all things. Whatever Allâh restored to His Messenger from the people of the towns, it is for Allâh and for His Messenger, and for the next of kin and the orphans and the needy and the wayfarer, so that the rich may not share it out among them. And whatever the Messenger gives you, accept it, and whatever he forbids you, abstain (therefrom); and faithful in your duty. (Otherwise Allâh shall inflict harsh punishment upon you). It is for the poor who fled ⁽¹⁾, who were driven from their homes and their possessions, seeking grace of Allâh and (His) pleasure, and helping Allâh and His Messenger. These are the true ones. And those who lived in the city ⁽²⁾, and were of the faith, love those who have fled to them and put the newcomers before themselves, though they themselves may be in poverty, and whoever is saved from the baseness of soul, these are the successful." And those who came after them say: Our Lord, forgive us and our brethren who preceded us in embracing the faith, and let us have no rancour in our hearts towards those who believe. Our Lord, surely Thou art kind, Merciful (lix 6-10).

Allâh has mentioned the **Muhâjirîn** (The Meccans who migrated with the Prophet to Medina) and the **Ansârs** (the Medenese who received the Prophet and his followers in their city and helped him and supported him) and mentioned as well

(1) Migrated from Mecca to Medina (to be safe from the injury inflicted on them by the heathens of Mecca).

(2) The City of the Prophet — Medina.

those who embraced Islam later and migrated likewise to Medina. Into this third category (of those who came later) are included all those (who embrace Islam) until the end of the world. They are alluded to also in the Sayings of Allâh: "And those who believed afterwards and fled and struggled hard in Allâh's way, and those who gave shelter and helped — these are truly the believers. For them is forgiveness and an honourable provision" (VIII 75). To them also refers the Qur'anic Verse: "And others from among them who have not yet joined them. And He is the Mighty, the Wise" (LXIII 3).

The meaning of "You did not press forward against it any horse or any camel" is: (You acquired a land) without stirring or driving horses or camels, i.e. without fighting. Accordingly, the jurists have said that *fay'*-land is land acquired from the infidels without fighting. It is called *fay' li-anna l-Lâha afâ'ahu 'ala-l-muslimîn* (because Allâh restored it to the Muslims from the hands of the infidels). Fundamentally, Allâh has created all things of value (*amwâl*: possessions, properties) to be devoted to His service (worship, as a sign of gratitude towards Him).

This is because He created His human creatures to serve and worship Him. As for the disbelievers, He allowed His faithful servants who worship Him to murder those who did not worship him and to rob the infidels who did not serve his purpose. So He returned to His faithful servants that which they deserved to be returned to them, as would be returned to a man that which has been wrested from him of his lawful inheritance, although he might not have taken possession of it at all. This case is similar to the case of the *gizyah* (poll-tax) taken from the Jews and the Christians, and similar also to the sums of money stipulated in contracting peace with the enemy or presented to the Sultan of the Muslims. It is similar too to the *haml* or *himl* ⁽¹⁾ carried from the lands of the Christians and others

(1) Load carried to someone as a present, etc.

(non-Muslims), as well as to that which was collected from the merchants of belligerent nations, amounting to ten per cent, or from the Jewish and the Christian merchants (living under Muslim suzerainty) but trading in a land not of their own ⁽¹⁾, and amounting only to five per cent. These are the amounts which 'Umar Ibn al-Khattâb, may Allâh bless him, levied. Similar to this too is the money (and goods) forfeited by those (non-Muslims) if they violated their agreement (with the Muslim state under the suzerainty of which they lived). It is similar also to *kharâj* (land tribute) levied originally on lands belonging to non-Muslims, although some of it was levied later from the Muslims (when the tribute land became the property of a Muslim).

Together with the *fay'*, in the same category, are all the resources which belong to the state treasury (according to Islam), such as the goods with no recognised owner, the inheritance left by a Muslim with no known heir, possessions acquired by usurpation, loans and deposits of which the owners are impossible to trace; as well as other forms of Muslim property such as landed property or movable possessions. All these and similar (forms of goods) are Muslim property (belonging to the state treasury in Islam). Allâh has, however, mentioned in the Qur'ân the *fay'* only (because other complications of inheritance did not constitute a problem at the time of the Prophet). Every Muslim who died, during the lifetime of the Prophet, peace be upon him, had a recognised heir, since all genealogies were at that time known and obvious. Once, however, a man of a certain tribe died and left no heir; the Prophet transferred that dead man's inheritance to the oldest member of that tribe, i.e. to the nearest relative of their common grandfather. Many *jurists*, among whom is Ahmad Ibn Hanbal as well as many others, maintained explicitly the same view.

(1) In another locality than that which they inhabit in the land of the Muslim state.

On another occasion, a man died leaving only one freedman; the Prophet paid the inheritance to that freedman. Very many of the followers of Ahmad Ibn Hanbal, and others too, held the same view. At another time, the Prophet paid the inheritance of a deceased person to a man of the same village. Muhammad, peace be upon him, and his (four) immediate successors were rather indulgent in paying the inheritance of a deceased person heirless by law, to a man with whom he had the nearest and clearest relationship possible, as we have mentioned.

The Prophet did not collect from the Muslims (anything) except the *sadaqât* (pl. of *sadaqa*)⁽¹⁾, but he always urged them to strive in the cause of Allâh with their money (to be charitable) and with themselves (to go to war for the expansion of the Religion of Allâh or for defending Islam and the Islamic state)⁽²⁾, as Allâh has said, repeatedly, in His Book.

In the time of the Prophet, peace be upon him, as well as at the time of Abû Bakr (the first Caliph after the Prophet), there was no general Register for the sums of money received and redistributed by the state, but these sums were divided (among those having right to) later on. At the time of 'Umar Ibn al-Khattâb, may Allâh bless him, revenues increased, the Muslim land extended and the population in the Muslim land grew with astonishing speed. ('Umar Ibn al-Khattâb) instituted the Register (of the Army) for the warriors and others. The

(1) *sadaqa*, originally, is free alms-giving. Islam imposed on the Muslim sums of money (called also *sadaqa*) to be redistributed among the poor and the needy, etc. not as charity, but as a right which the poor have to a part of the wealth of the rich.

(2) The Muslim state is a state run by a Muslim governor but not abiding by the precepts of Islam in every matter. The Islamic state is the state headed by a Muslim running his state by the precepts of Islam in every matter, religious, social, economic, etc.

Register of the army included, at that time, most of the (names of the warriors) and was, in fact, the most important Register the Muslims had.

In the provinces, there were also Registers for (the revenues from) the land tribute, for the land produce and for other sums received by the state. The Prophet, peace be upon him, and his immediate successors called repeatedly the collectors of *sadaqa, fay'* and other revenues, to account. The state revenues were at that time (at the time of 'Umar Ibn al-Khattâb) and at the time before him, of three kinds:

1 — That which the Imâm (Caliph) has right to, according to the Qur'ân, the Sunna and the consensus of the Muslims, as has been mentioned.

2 — That which (the Imâm) has no right to (but which he, at any rate, did collect), namely indemnities imposed on the population of a locality for the benefit of the State treasury, as, for example in the case of a crime committed in that locality — even though the victim might have an heir — or as in the case of a fine, instead of a corporal penalty, imposed because of a violation of a religious precept or, as in the case of *mukûs* (taxes on commodities, imported or local) which are not subject to convention (but should be levied in accordance with the injunctions of Allâh).

3 — That which is subjected to a variety of opinion and is, therefore, disputed, as in the case of an inheritance from a deceased person. Then if the person has no close relatives, the inheritance might provoke dispute.

V — Injustice on the part of the ruler and on the part of the ruled.

Injustice is often committed by the rulers as well as by the ruled: the former exact sums to which they have no right, and the latter abstain from paying what they ought to. The soldiers in the military zones (*jund*) and the peasant people inflict injustices on one another. In the same way, some people abstain from joining a holy war when they ought to, and

some rulers hoard sums of money (belonging to the state treasury) and refuse to spend when expenditure is necessary and rightful. Similar, too, is the case with indemnities imposed on those (who refuse) to pay their dues (to the state treasury): sometimes such indemnities are overlooked lawfully or unlawfully, as they are sometimes imposed in an arbitrary manner.

The principle to be followed in this respect is that every man should pay what he owes, whether it be a deposit, a (share in a commercial) speculation, (a dividend from) a partnership, a sum of money entrusted to an agent or money belonging to an orphan, or to waqf or to the public treasury, or a debt which the debtor could have settled. If he (the trustee) does not return the deposit or settle the debt, and it is proved that he could have done so, he should be punished (and kept under punishment) until he repays the amount or discloses where it is hidden. If he does disclose it while still in prison, the sum due should be deducted from that money and there will no longer be any need to beat the man. If, on the other hand, he does not reveal the hiding-place or make any payment, he should be beaten until he is willing to pay the money or to find some means which will make the payment possible.

A man would be treated similarly, if he refused to pay alimony (to his divorced wife), while he is able to do so. 'Amr Ibn ash-Sharîd ⁽¹⁾ related on the authority of his father from the Prophet, peace be upon him, that "Procrastination from a man of means makes it lawful to treat him with contempt ⁽²⁾ and to punish him" (related in the *Sunan*). The Prophet, peace be upon him, has said also: "Procrastination in a rich man is injustice" (cited in the *Two Sahîhs*). Procrastination (*layy, mutl*) is "continuous deferring of payment of debts.

(1) 'Amr Ibn ash-Sharîd is one of the *tâbi'in* (of the generation following on that of the Prophet). His father was a Companion of the Prophet.

(2) بحيل عرضه : yuhilu 'irdahu or honours): to be treated with contempt.

And the man who inflicts injustice on others deserves punishment and moderate beating (*ta'zîr*). This being a principle unanimously agreed to: everyone guilty of a (religious disobedience) or neglecting a duty deserves punishment. If no punishment (for certain disobedience) is provided for in the law, the man in authority would resort to *ta'zîr* and decide the relative punishment to the best of his knowledge: he would punish the rich procrastinator with imprisonment; if the procrastinator insisted on refusing payment, the man in authority would beat him until he paid. This has been determined by the jurists of the schools of law founded by Mâlik ⁽¹⁾, Shâfi'i ⁽²⁾, Ahmad Ibn Hanbal and others. I know of no variance of opinion in this respect. Bukhârî quoted in his *Sahîh*, on the authority of 'Abdullâh Ibn 'Umar ⁽³⁾, that when the Prophet, peace be upon him, concluded peace with the people of Khaibar and stipulated that they should surrender their gold, their silver and the arms in their possession, he asked one of the Jews, Sa'aya (Ishaia) by name, and a paternal uncle to (the rich and notable Jew) Huyay Ibn Akhtab, where the hoarded treasure of Huyay was. Sa'aya answered: It was spent on the community and on the wars. The Prophet said: But the time in which Huyay had his wealth is not far back, and the wealth was too great

(1) Mâlik Ibn Anas d. 179 A.H. (799 A.D.) was the learned man of Hijâz in Hadîth and in jurisprudence. He depended mostly on the Hadîth in his decisions and resorted to opinion (in deciding religious matters) only in the most urgent necessity.

(2) Muhammad Ibn Idrîs ash-Shâfi'i d. 204 A.H. (820 A.D.) was early in his life a follower of Mâlik Ibn Anas. But when he visited Irâq and later Egypt, he developed a system of Law based on that of Mâlik (depending mostly on Hadîth) and that of Abû Hanîfa (depending mostly on opinion).

(3) 'Abdullâh Ibn 'Umar d. 74 A.H. (693 A.D.) was the son of the Caliph 'Umar Ibn al-Khattâb. At first he took part in the conquests of Syria, Iraq and Egypt. He was very pious and had a good knowledge of many branches of religious science.

to be dispersed in such a short time. Then, the Prophet, peace be upon him, handed Sa'ya over to az-Zubair (Ibn al-'Awwâm) who tortured Sa'ya until he said: I used to see Huyay frequent a certain ruin in the neighbourhood. Some people were sent to roam about the place, and they found the wealth there. This man, Sa'ya, was a **dhimmi** (a Jew living in the Islamic State) and a dhimmi (as any other Muslim) may not be punished except in the normal course of justice. Similarly, anyone who conceals anything which ought to be disclosed (to the State) even if it is only an indication leading to the concealed thing, will be punished because he has neglected his duty.

If the collectors of revenues or pretended officials have appropriated certain sums (illegally), the just ruler should recover these sums from them; included (in this category) are the presents given to them in virtue of their positions. Abû Sa'id al-Khudrî ⁽¹⁾, may Allâh bless him, said: "Presents made to the collectors of revenues are (illegal) appropriations". Ibrâhîm al-Harbî related in the Chapter on **Presents** (in the collections of Hadîth Books), on the authority of Ibn 'Abbâs, that the Prophet, peace be upon him, has said: "Presents made to the viceroys are (illegal) appropriations."

It is, further, related in the **Two Sahîhs**, on the authority of Abû Humaid as-Sâ'idî ⁽²⁾, may Allâh bless him, that the Prophet appointed a man from the Azd Tribe, by the name Ibn al-Lutbiyyah, to collect the **sadaqa**. When he came back from his collecting tour, he said: this (part of cattle) belongs to you (to the state treasury) and this to me. The Prophet, peace be upon him, exclaimed: What do you think of a man whom we appoint over a piece of the work over which Allâh has given us authority; then this man comes back and accosts

(1) Abû Sa'id al-Khudrî was a Companion of the Prophet and a man versed in Law. He has also related from the Prophet several Hadith.

(2) Abû Humaid as-Sâ'idî was a Companion of the Prophet.

us with the words: This is for you, and this has been made a present to me ! Had he stayed in his father's house or in his mother's house and waited to see whether somebody would make to him some present or not. By Him, in Whose hand my soul is, anyone who appropriates (of the revenues he collects) anything will come on the Day of Judgment with what he has stolen, bearing it on his neck, be it a camel grumbling, a cow lowing or a ewe bleating. Then he raised his arms (towards heaven), to the extent that we were able to see the two hairy parts of his armpits (and said): "O My Lord, have I proclaimed (to them what should be the right way of behaviour)! Have I proclaimed! Have I proclaimed!"

Similar to the presents (acquired during collecting revenues for the state) is the favour rendered to the viceroys (and other officials) in all transactions, such as buying and selling, letting and renting, commercial partnership, common irrigation, common cultivation and the like. So 'Umar Ibn al-Khattâb, may Allâh bless him, has taken one half of the acquired wealth of his collectors of revenues, after their return from office, although some of them were men of integrity, pious and irreproachable. He did so, because during their term of office these collectors of revenues had received favours in different forms. It was expected of 'Umar to behave in that way since he was a just sovereign.

But when the ruler and the subjects **changed** in character it became the duty of every man to carry out, on the injunctions of Allâh, as much as he could and to avoid what Allâh has forbidden without abstaining from what Allâh has allowed him or what Allâh has not forbidden.

Sometimes the subjects are tried or afflicted by governors who refuse presents and other favours in order to be free to make all exactions in full, neglecting at the same time (to care for) the (interests of the people) or to provide for their needs while Allâh has ordered (that such needs be answered). In fact, the people prefer a governor who accepts presents or some other

favour in return for rendering them a service or helping them avoid an injustice. The former will be a man who has exchanged his salvation (in the hereafter) for the well-being of others (in this world); and the worst bargain is that in which a man exchanges his own salvation for the worldly well-being of another. The essential duty of the governors is that they should try to defend their subjects against injustice, as best as they can, and to satisfy their needs without which the subjects' interest and prosperity are never attained. The governor should make known to the sovereign the needs of his subjects and should describe to him their conditions and indicate to him the ways that may help in satisfying their needs. He should also divert the sovereign, mildly or otherwise, from any intention or action that might injure his subjects. The scribes would do likewise when they have a personal interest to further, with the help of the sovereign. It is related in the Saying of the Prophet, peace be upon him, as transmitted by Hind Ibn Abî Hâlah, may Allâh bless him, that the Prophet used to say: "Tell me always of the needs of those who cannot reach me with their needs; he who transmits to the man in authority an account of the needs of those who cannot satisfy their needs by themselves, Allâh will render firm his feet on the bridge to Paradise, on a day when most feet are never firm".

Ahmad Ibn Hanbal has written, and Abû Dâwûd ⁽¹⁾ too in his *Sunan*, on the authority of Abû Umâma al-Bâhili, may Allâh bless him, that the Prophet, peace be upon him, has said: "He who makes, in favour of his (Muslim) brother, an intercession for which he is offered a present, and he does accept it, he will be guilty of a grave sin of usury". Ibrâhîm al-Harbi ⁽²⁾ has also

(1) Abû Dâwûd as-Sajistâni d. 275 A.H. (899 A.D.) a compiler of Hadith.

(2) Ibrâhîm Ibn Is-hâq al-Harbi d. in Baghdâd 285 A.H. (898 A.D.) was a follower of the Hanbali school of Law (of Ahmad Ibn Hanbal) and versed in the sciences of Hadith, jurisprudence and philology.

related, on the authority of 'Abdullâh Ibn Mas'ûd, may Allâh bless him, (that the Prophet has said): "Ill-gotten money (is also earned as follows): When a man asks a service to be rendered to another man, and the service is rendered, then the latter offers the former a present, and the former accepts it!" Ibrâhîm al-Harbi tells of (the jurist) Masrûq (al-Ajda'i) ⁽¹⁾ who spoke to ('Ubaidullâh) Ibn Ziyâd ⁽²⁾ (the viceroy of Iraq) concerning a grievance inflicted on a man; the grievance was redressed. The man, then, sent (to Masrûq) a young slave as a present. Masrûq refused to accept the present and said (to the donor): I have heard Ibn Mas'ûd say: "He who undoes the wrong of a Muslim is in his debt — in return for that — a sum, small or big, will be ill-gotten gain". Then man said: "O Abû 'Abdur-Rahmân, we never considered anything as ill-gotten money except a bribe in connection with a judgement." "O", Masrûq said: "That is infidelity!"

But when the man in authority extracts from the collectors (a sum which they had gathered in an illegal manner) to appropriate it himself or to share it with his own relatives (and friends), then none of them (the ruler and the collectors) should be supported, since everyone of them is a transgressor. They are in the same position as the thief who robs from another thief, or as the two groups fighting each other out of rage or in order to attain worldly power; and one ought not to ally oneself with any one in an unjust cause. Such an alliance is of two kinds:

The first is an alliance in righteousness and in piety, as in the case of *jihâd* (holy war), the execution of penalties (pres-

(1) Masrûq al-Ajda'i d. 3 A.H. (82-6863 A.D.) was a jurist who lived in Kûfa (Iraq).

(2) Ibn Ziyâd — 'Ubaidullâh Ibn Ziyâd was the governor of Kûfa 53 A.H. (673 A.D. and after). During his term of government the battle of Karbalâ' and the martyrdom of Husain (Ibn Ali Ibn Abî Tâlib) took place 60 A.H. (680 A.D.).

cribed by Allâh), gathering the dues in full and rendering to everyone the rights he is entitled to. These are duties which Allâh and His Messenger have enjoined and he who chooses to hold back (in such matters) because in his opinion he might be helping a transgressor, then he is the one who has neglected a duty imposed on every individual Muslim or on the community at large ⁽¹⁾, imagining that his non-commitment is piety. — But how often cowardice and weakness are confounded with piety, since both (cowardice and weakness on one hand and piety on the other) are timidity and neutrality.

The second is cooperation in sin and aggression, as for example being accessory to killing a man unjustly, or extorting money illegally, or beating one who deserves not to be beaten and the like. These are things which Allâh and His Messenger have forbidden.

Surely, if certain properties were acquired (or retained) in an illegal manner, and of which the restoration to their lawful owners became impossible, like much of that which is state revenues, then the effort to ensure that these properties be spent on matters of general interest of the Muslims — such as manning the frontiers, equipping the warriors and the like — is a collaboration of righteousness and piety. It is the duty of the sovereign, in respect of these properties, in case he cannot trace the lawful owners to whom these properties should be restored — to liquidate them in the general public interest and to repent his previous action, if he himself had wrongfully acquired those properties. This is the opinion of the ma-

(1) Religious duties in Islam may be of different degrees. For instance: *fard 'ain* (personal duty) imposed directly on every adult Muslim and ought to be performed by everyone, *fard kifâya* (collective duty) imposed on the Muslims as a whole and should be performed by one of them at least. If nobody performed it every one of the Muslims would be guilty of neglect and deserve punishment in the hereafter.

jority of jurists, like Mâlik, Abû Hanîfah and Ahmad; and is also corroborated by the word of several Companions (of the Prophet), and is simultaneously supported by various legal evidence, as is shown in another place (of this book).

On the other hand, if these properties had been acquired illegally by someone else, it would be the duty of the sovereign to restore them to their lawful owners.

If the sovereign declined, however, to restore (an **extorted** property), an effort should be made (by someone) to help in spending the proceeds on the affairs of its lawful owner rather than leave it in the hands of those who would deprive both its lawful owners and the Muslims too of its benefits. A basic principle, in this respect, is the Saying of Allâh: "So keep your duty Allâh as much as you can" (LXIV 16), in accordance with Allâh's saying: "Keep your duty to Allâh as it ought to be kept" (III 101), as well as the Saying of the Prophet, peace be upon him: "If I ordered you to do a thing, do of it as much as you can."

To begin with, the essential thing is to safeguard all the interests (of the community and of the individuals) and to endeavour to make them one, as well as to annul all corruption or to minimize it (at least). This being impossible, then the thing to do is to choose the greater good while overlooking the lesser evils and at the same time avoiding the greater evil while suffering the lesser would be quite legitimate.

A supporter of sin and transgression is he who helps an unjust man to continue in his injustice. But he who helps the oppressed to lessen his grievance or pays a sum which has been imposed illegally on someone else, he is then an agent of the oppressed and not of the oppressor. He is, in this matter, like a man who lends (the oppressed and needy a sum of money) or pays, voluntarily, an extorted sum (for another). For instance, the guardian of an orphan was asked by an oppressor to furnish a sum of money. If this guardian deemed it fit to pay the sum in full or if he managed to pay a smaller sum either to the oppressor directly or to another one (who has influence on that

oppressor), he is then considered to be a doer of good; and doers of good are not called to account.

There is also the example of the agent appointed by the Master of the students, of the scribes or of others, and who acts on the part of these groups in making contracts, in receiving amounts of money (due to them) or paying amounts which they may owe (to others). This man should not be simultaneously an agent of people who are known to be extortioners.

Furthermore, if an unjust indemnity was imposed on a village, a quarter, a market-place or a town and a charitable man acted as mediator and proposed to pay the sum required or to get it reduced as much as possible so that the sum could be paid to him in proportional shares and instalments; and he did all this impartially and without bribery, but simply out of altruism and honesty — such a man is usually regarded as a doer of good. It is much more probable, however, that such a mediator is an agent of the oppressors, and that he is biased, corrupt, favours one party and taxes the other party with whatever sum he chooses. This man is one of the worst oppressors. On the Last Day, all these oppressors and their helpers will be squeezed in coffins of fire and thrown into Hell!

The ways of expenditure.

As regards expenditures, it is necessary to begin with the most important of the affairs of the Muslims, and then following that in importance, like the pay to those who are of general utility to the Muslims, such as the warriors who are the makers of victory and (the elements of) *jihād*; these have more right than anybody else to the *fay'*, because they have won it. To this effect, the jurists were at variance: is it exclusively the warriors' right, or should it be apportioned for different requirements of expenditure? The rest of the state revenues is to cover the expenditure of all the departments, as agreed upon by all, except in the case of certain kinds (which are preliminarily assigned wholly or partly to certain domains, such as) alms and booty.

Having right to the *fay'* also are those who fill public functions such as the governors, judges, the learned men ⁽¹⁾, those whose business is to administer the revenues (collect them, preserve them and redistribute them) and the like, even the leaders in prayer and the callers to prayer, etc.

A portion of the *fay'* is also spent in paying the prices and services of what is of general benefit such as the manning of the frontiers with horses and arms, and the maintenance of roads, bridges and waterways (as rivers, for instance).

Those in need (of money for various purposes) have a right to the *fay'* too. The jurists are at variance in this respect: should these needy be given from the *zakât*-alms only (as much *zakât*-alms as may go around) or should they be given also from the *fay'* and other state resources? Opinion is divided in this matter: Ahmad Ibn Hanbal and some other learned men maintain that the needy have priority even in the *fay'* over all other persons; certain other jurists say that the needy have their right to *fay'* with Islam (because they are Muslims), so they share in it (like any other Muslim) as would the heirs share in inheritance. In fact, the needy should have priority, since the Prophet himself, peace be upon him, used to give them priority. He had done so in distributing the possessions acquired after the deportation of the Jews of Banu an-Nadîr.

Further, 'Umar Ibn al-Khattâb, may Allâh bless him, said: "No one has more right to this (income of the state) than another. The underlying principles in this connection are: precedence in embracing Islam, utility to the community, feats

(1) The learned men were considered by the Islamic state as officials, since their job was to instruct the people in matters of Religion in public (in the mosques). The state paid them salaries.

in war and personal needs". 'Umar, in this way, has divided the Muslims into four categories:

— Those who had precedence over others (because they embraced Islam earlier) since they were those who procured the *fay'* by conquest.

— Those who are of good service to the Muslims in procuring further benefits, such as the governors and the learned men who procure (for the Muslims) religious as well as worldly good.

— Those who prove to be of great value in the struggle for the well-being of the Muslims, like the warriors in the cause of Allâh or those soldiers stationed in the provinces, the collectors of intelligence whether coming with this intelligence from the various provinces or being resident counsellors and the like.

— Those with certain needs.

If anyone of these people (in the first three categories) offered his services gratis, so much the better; otherwise, he should be given a sum sufficient to satisfy his needs or an amount equivalent to the services he rendered. That the man is given a payment, from the money intended for the general expenditure or from *zakât*-alms, either equivalent to the services he rendered or according to his needs, no other sum is allowed him except that deserved by his peers: a share from a booty which he had helped to acquire, or from a bequest.

The man in authority should not give anything to any man who has no right to a payment because of a personal passion, of relationship, friendship and the like, particularly, for a forbidden service, such as in the case of the effeminate among the beardless lads, free or slave, the prostitutes, the singers, the clowns or the fortune-tellers whether diviners, astrologers, or the like.

It is permissible, however, to accord a sum of money to someone in order to win his heart to Islam, although he ought not to accept such pay (if he was a Muslim). Allâh has allowed, as is mentioned in the Qur'ân, the pay, from *zakât*-alms, to

those whose hearts are won to Islam ⁽¹⁾. The Prophet, peace be upon him, used to accord such payments to persons of this category, as the chiefs who enjoy esteem in their tribes. He had given money and camels to Aqra' Ibn Hâbis the Chief of Tamîm Tribe, to 'Uyaynah Ibn Hisn the Chief of Fazara Tribe, to Zaid al-Khayr of the Tayy Tribe as well as to the Chief of the lesser group of Nabhân and to 'Alqama Ibn 'Ulâtha al-'Amiri the Chief of the Kilâb Tribe. He also made payments along the same line to the chiefs of the Quraysh Tribe (of Mecca, who had set up a stiff resistance to Islam until the last moment. When Muhammad conquered Mecca, he forgave them and named them): *at-Tulaqâ'* ⁽²⁾ (the forgiven). Of these are: Safwân Ibn Umayyah, 'Ikrima Ibn Abî Jahl, Abû Sufyân Ibn Harb, Sahl Ibn 'Umar, al-Hârith Ibn Hishâm and many others.

It is related, in the *Two Sahîhs*, that Abû Sa'id al-Khudrî, may Allâh bless him, said: "When Ali was in Yaman he sent to the Messenger of Allâh, peace be upon him, a lump of gold-ore. The Messenger of Allâh divided it among four persons: Al-Aqra' Ibn Hâbis, 'Uyaynah Ibn Hisn, 'Alqama Ibn 'Ulâtha and Zaid al-Khayr. The Quraysh (of Mecca) and the Ansâr (of Medina) became angry and remarked: "(The Prophet) makes pre-

(1) Those whose hearts are to be won to Islâm (Arabic: *al-mu'allafatu qulûbuhum*): are individuals, Muslims or non-Muslims, whom the state deems of service to the cause of Islam (but who would not render such service unless they are paid for it). They may also be opponents of Islam, so their evil would be averted by such pay.

(2) *At-Tulaqâ'* (the forgiven, the freed of captivity) is a term used by the Prophet when he entered Mecca victoriously (8 A.H.). The pagan Meccan opposed Islam to the last minute. When Muhammad conquered Mecca, the chiefs came to him to offer their submission. He asked them: "And now, how do you think I am going to treat you?" They answered: "As would a good brother". The Prophet said to them "Go, you are freed!"

sents to the Chiefs of Najd and neglects to treat us likewise."

The Messenger of Allâh, peace be upon him, said to them: "I have done this so that I may win their hearts to Islam!" It is reported that a man with a thick beard, high cheeks, sunken eyes, projecting forehead and with his head clean shaved came forward and spoke: "You ought to fear Allâh, O Muhammad!"

The Messenger of Allâh, peace be upon him, said: "Who may obey Allâh, if I do disobey Him. The people of the Earth have confidence in me, and you do not!"

Then the man turned to go. One among those present — it is related that he was Khâlid Ibn al-Walid — asked the Prophet for permission to kill the man. The Prophet remarked: "Of the posterity of this man shall be a people who will read the Qur'ân with their tongues only. They will kill the followers of Islam and spare the lives of the worshippers of idols; they will leave Islam behind them as would an arrow pass through the game ⁽¹⁾. If I could live until their days, I would kill them until they were annihilated."

It is related too, that Rafi' Ibn Khudaij ⁽²⁾ retold:

- (1) When the arrow is very sharp and cleverly shot, it would attain high speed. If it struck a game, under such conditions, it would pierce it and pass from one side to the other without being smeared with blood. The people alluded to above are compared to this arrow: they had once entered Islam, and now they left it without being influenced by it in the least.
- (2) Rafi' Ibn Khudaij d. 74 A.H. (693 A.D.) was a Companion of the Prophet who related from him Hadith (Traditions). He is very much trusted in his relation of Hadith. The story and the verses recited in the presence of the Prophet by 'Abbâs Ibn Mirdâs were connected with the division of booty after the Battle of Hunain 8 A.H. (629 A.D.). Abû Sufyân Ibn Harb (the Chief of the Meccan Nobility), Safwân Ibn Umayya, etc. were of those whose faith in Islam was a little shaky, so the Prophet gave them more of the booty to make them hold to Islam faster. The poet 'Abbâb Ibn Mirdâs was

"The Messenger of Allâh, peace be upon him, once gave Abû Sufyân Ibn Harb, Safwân Ibn Umayya, 'Uyayna Ibn Hisn and al-Aqra' Ibn Hâbis one hundred camels each, and gave to 'Abbâs Ibn Mirdâs a small number. Abbâs recited (before the Prophet, on the spot):

How would you let the booty acquired by me and by (my stallion) 'Ubaid go to 'Uyayna and al-Aqra'!

Neither Hisn nor Hâbis (fathers of 'Uyayna and of al-Aqra') was greater in the community than Mirdâs (my father).

Nor was I less than any of them!

And he whom you humiliate to-day shall never be honoured!

The Messenger of Allâh increased, then, the share of Abbâs Ibn Mirdâs to one hundred camels (related by Muslim). Al-'Ubaid being the name of a horse belonging to 'Abbâs.

And those whose hearts are to be won to Islam are of two kinds: Muslims or infidels. A payment to an infidel may be of a decided benefit, to bring him over to Islam; or may ward off an evil from him, if such evil could not be averted except by a payment.

A similar gain may be secured if such a payment were made to an influential Muslim to encourage him to be a better Muslim, or to set an example to some of his peers who might embrace Islam, or to cause more damage to the enemy. Through him, revenues might be collected from those who only pay out of fear of someone. The payment (to a Muslim) might also avert a harm which could not otherwise be averted.

considered to be very sincere (in his faith), but after that battle he turned to be of "those who may hold faster to Islam" if they are accorded material help. So the Prophet increased his share of the booty after that battle.

This kind of payment — though outwardly it constitutes a favour to the strong chiefs and a neglect of the weak common people, as is the habit of despotic kings — should be judged by the intention behind it. If it were intended to be in the interest of Religion (Islam) and of the followers of Religion, it would be of the same category as the payment which the Prophet and his Caliphs (his four immediate successors) used to make. If, on the contrary, the intention behind it was to secure exaltation in this world and to cause mischief, then it would be similar to the payment made by the Pharaoh. Those who renounce such a payment, when it is intended to be in the interest of Islam, are the heretics, like Dul-Khuwaisirah ⁽¹⁾ who renounced such action by the Prophet and to whom the Prophet addressed the Saying cited above. The followers of Dul-Khuwaisirah, the Khawârij or Khârijites ⁽²⁾, also renounced the action of the Caliph Ali Ibn Abî Tâlib, may Allâh bless him, when he agreed (after the Battle of Siffin) to arbitration and that his title (Amîru-l-Mu'mînîn: Prince of the Faithful — Caliph) be erased (in the document of arbitration) and that the women and the children of the different Muslim groups (fighting one another) may not be taken as captives of war. The Prophet, peace be upon him, ordered that these (heretics) be fought, because they entertained a corrupted religion which can neither improve worldly conditions nor secure salvation in the hereafter. False piety often resembles cowardice and miserliness. Both cowardice and miserliness have a bad effect, fear of making a mistake which causes abstention

(1) Dul-Khuwaisirah was the man who interrupted the Prophet and said: "Fear Allâh, O Muhammad (and divide the booty among us fairly)" (see above, p. 63).

(2) The Khawârij or Khârijites were followers of Ali Ibn Abî Tâlib who fell out with him afterwards and deserted his ranks (hence their name: khawârij, goes out, deserters). They were extremists, uncompromising and heretics. Ali fought them for a while and defeated them. One of them assassinated Ali afterwards, 40 A.H. (660 A.D.).

from any action. In fact, Jihâd and spending in the cause of Allâh are often abstained from, not out of fear of Allâh but out of direct cowardice and inherent miserliness. Bearing on the subject is the Saying of the Prophet, peace be upon him: "The worst in Man is a scaring miserliness and a terrifying cowardice" (Tirmidi declares this Saying to be authentic).

A man may sometimes abstain from an action imagining that his behaviour is piety or feigning that he is pious, while this behaviour is a desire to gain authority and self-exaltation. The Saying of the Prophet, peace be upon him: "Actions are judged by the intentions underlying them" is a comprehensive sentence complete in itself. The intention is to the action as the soul is to the body. The man who prostrates himself to Allâh and the man who prostrates himself before the sun or the moon both touch the earth with their foreheads; their position (in prostration) seems to be one, but the former is the nearest of all the creatures to Allâh, and the latter is the farthest of them from Him!

Allâh has said: "Enjoin steadfastness on each other, and enjoin compassion on each other" (xc 16). It is also related from the Companions of the Prophet: "The best of Faith is generosity and fortitude," as no community could be ruled and cared for except with generosity which is bounty in pay, and with help which needs bravery. Even Religion as such and worldly (politics) can never be maintained without these two merits. So any (ruler) who does not undertake to support his rule with these two merits, Allâh will deprive him of it and transfer it to another. Touching on this idea, Allâh has said: "O you who believe, what (excuse) have you that when it is said to you: Go forth in Allâh's way, you should incline heavily to earth? Are you contented with this world's life instead of the hereafter? The provision of this world's life is but little as compared with the hereafter. If you will not go forth, He will chastise you with a painful chastisement, and bring in your place a people other than you, and you can do Him no harm. And Allâh

is Possessor of power over all things" (IX 38-39).

Allâh has also said (touching on the same theme): "Behold! you are those who are called to spend in Allâh's way, but among you are those who are niggardly; and whoever is niggardly, is niggardly against his own soul. And Allâh is Self-Sufficient and you are needy. And if you turn back, He will bring in your place another people. Then they will not be like you" (XLVII 38). Again Allâh has said: "Those of you who spent before the Victory ⁽¹⁾ and fought are not on a level (with others). They are greater in rank than those who spent and fought afterwards. And Allâh has promised good to all" (LVII 10). Allâh has here combined the rule with expenditure which is generosity and with fighting which is bravery. In several places of the Qur'ân Allâh has also said: "And strive hard in Allâh's way with your wealth and with your lives" (IX 41). Also He has shown that miserliness is one of the great sins, in His Saying: "And let not those who are niggardly in spending what Allâh has granted them out of His grace, think that it is good for them. Nay, it is evil for them. They shall have a collar of their niggardliness on the Resurrection day" (III 179); and in His Saying: "And those who hoard up gold and silver and spend it not in Allâh's way — announce to them a painful chastisement, etc." (IX 34).

Similarly, cowardice (is rebuked) in this Saying of His (speaking of the man who runs away from the battle-field) and leaves his people in the lurch: "And whoso turns his back to them on that day — unless manœuvring for battle or turning to join a company — he, indeed, incurs Allâh's wrath and his refuge is hell. And an evil destination it is" (VIII 16); and in this Saying: "And they swear by Allâh that they are truly of

(1) Before the victory: before the conquest of Mecca the pagans were still putting up a stiff resistance to Islam, so soldiers and money were needed badly for sending expeditions against them. But after the Victory over the Meccans and the conquest of Mecca itself, such need was no longer urgent.

you. Surely they are not of you, but they are a people who are afraid" (IX 56). This theme often occurs in the Qur'ân and in the **Sunna**, and people all over the world agree with it. It is even said in the popular proverbs: 'Neither a spear nor a pot', meaning: "he is neither brave nor generous". Another popular saying is: 'Neither a knight on horseback nor a countenance of a beduin' (since the beduins are known to receive guests with a smiling face).

But people are, in this respect, of three classes:

A class dominated by desire for power and doing mischief, having no consideration whatsoever of the Day of Judgement. They realize that they can only attain domination with (various kinds of) payment; and these are not possible except by extorting money illegally. Consequently, they became 'plunderers (from some people, conferrers (of favours on some other people)'. Those say: no one can attain to domination unless he be one who "eats and lets others eat". If an upright man, who neither eats nor lets others eat, attained to power, the higher officials would detest him and finish by deposing him. Sometimes they are not satisfied with that: they may cause him bodily and financial harm. Those people consider only their immediate (interests) in this world and neglect the future (good) of this life and the life to come. Their end will be a bad one in this life and in the hereafter, if nothing occurred that might improve their situation, such as repentance.

Another class of people have fear of Allâh and piety which prevent them from doing anything they believe to be morally repulsive, such as oppressing others or committing sins. This is understandable as one of the duties of Man. But, at the same time those people think that political life requires behaviour like that of the people of the previous class (i.e. those who abstain from important collective actions for fear that these actions might cause some harm to others), so they refrain completely from such actions. Sometimes, they may have a certain weakness such as cowardice, miserliness or impatience;

this would strengthen their pious attitude and cause them to neglect a collective duty the neglect of which is often more harmful than certain sins; or they may, consequently, forbid an action as fundamental as "strive in the way of Allâh". At another time they may interpret (some Verse in the Qur'ân or some Saying of the Prophet, to that effect, as an excuse for not fulfilling a certain duty). At times, on the contrary, they may believe that abstention from certain actions (usually enjoined on Muslims) is a duty of everyone (for the time being, at least) and find that fighting is the only way to prevent others from fulfilling that duty, and so they fight their Muslim Brethren, as did the Khawârij. Those people are not the right people to manage the worldly affairs or the affairs of True Religion, though they may be good for (the preservation of) certain aspects of religion and for some worldly affairs. This faulty behaviour, however, may be excused, if they have behaved sincerely to the best of their knowledge. Their shortcomings in this case may also be forgiven. But they may be, too, of "Those whose effort goes astray in this world's life, and they think that they are doing good work" (XVIII 104). This is the attitude of those who are not willing to appropriate anything, or to let others appropriate anything, and who never try to win influential people and wicked men over to their side with a sum of money or by a service: they think that a payment to those whose hearts are to be won to Islam, or whose wickedness is to be warded off is an illegal payment.

The third class of people are the bulk of the nation, who are the (true) followers of Muhammad, peace be upon him, and of his (four immediate) Caliphs (successors) — the masses as well as the chosen — (and who will continue to be his true followers to the end of the world. These are of the opinion that money) from the state treasury is paid and public service rendered to men, even though they may be rich, because it is necessary to improve conditions and to establish Religion in all its aspects.

The affairs of the state (even from the standpoint of Religion) can only be managed in this spirit, and neither can Religion be established nor worldly conditions improved except by this method. He is (the right ruler) who gives to men what men need and never appropriates except what is lawful and decent. Then such a ruler needs less expenditure (of this kind) than those before him required. This is so because people are encouraged to ask for more from the (ruler) who appropriates (much from the state treasury) than from the upright and honest in this respect. Moreover, people behave better in matters of Religion, under him than they would under the other. Honesty, accompanied with power, increases the prestige of Religion. It is quoted in the **Two Sahîhs** on the authority of Abû Sufyân Ibn Harb that Hercules, the Byzantine Emperor, asked him, concerning the Prophet, peace be upon him: "What did he use to order you?" (Abû Sufyân) answered: "He used to order us to perform prayer, to tell the truth, to be chaste and to strengthen our ties of kinship." It is related also that Allâh made a revelation to Ibrâhîm the Friend asking him: "O Ibrâhîm, do you know why I made of you a Friend of mine? It is because I noticed that you prefer giving to taking."

What we have mentioned concerning payments and grants — which are generosity and rendering services — has a counterpart in patience and anger which are courage and (a will) to ward off harm. In this case also, people are of three groups:

- A group of those whose anger is provoked when their own cause or Allâh's cause is infringed;
- A group whose anger is never provoked whether their own cause or Allâh's, is infringed;
- The third group being the righteous people whose anger is provoked only when Allâh's cause, and not theirs, is infringed.

'Aisha, ⁽¹⁾ may Allâh bless her, has said, as related in the

(1) 'Aisha (the daughter of the first Caliph Abû Bakr) was the wife of the Prophet Muhammad. She related from him many Hadith (Sayings).

Two Sahîhs: "The Messenger of Allâh, peace be upon him, has never struck a servant of his, a wife, a beast of burden or anything of the like except when he was on an expedition in the cause of Allâh, nor has he ever avenged himself against anyone for a wrong inflicted on him, except when the sacred ordinances of Allâh were violated. If the sacred ordinances of Allâh were violated, then nothing could appease his anger but vengeance for the sake of Allâh."

But the man whose anger is provoked in defence of his own interest, not as a result of the infringement of Allâh's cause, and who takes everything for himself while he does not give anything to anybody; this man, who belongs to a fourth group, is the worst of mankind. He is neither the right man for the establishment of Religion, nor is he fit to manage worldly affairs. The righteous among the men who can effect good government, nevertheless, are those who are able to perform all the (political) duties without resorting to any forbidden action; those who give a payment whenever a payment helps in establishing Religion, those who take only what they have a right to, those whose anger is provoked in the cause of their Lord whenever His sacred ordinances are violated and who deny themselves the fortunes due to them. Such were the habits of the Messenger of Allâh, peace be upon him, regarding the according or denying (of payment). And this is the most perfect (way to manage affairs). The nearer a man is to these qualities, the better he is. Let the Muslim, then, strive to come as near to the third group as possible and to ask Allâh forgiveness for that which he failed to attain or neglected to attain, recognizing, at any rate, the perfection of the mission entrusted by Allâh to Muhammad, peace be upon him. This also is intended by the words of Allâh, Glory and Exaltation are His: "Surely Allâh commands you to make over trusts to those worthy of them" (IV 58).

BOOK ONE

Penalties Concerning the Violation of Rights due to Allâh

CHAPTER ONE

Nature of a Limit (Set by Allâh) and of a Right (due to Him)

Examples of (these) Limits and Rights ⁽¹⁾.

Now we come to the second part of the Verse of the Qur'ân (quoted in the INTRODUCTION): "And that when you judge between people, you judge with justice" (IV 58). Judging between people is closely related to the limits (set by Allâh) and the rights (due to Allâh). These limits and rights are of two kinds; the first consists of the limits and rights of interest to the Muslims in general, the second are of interest to a special group or particular class of Muslim. All Muslims require to have (a knowledge and practice of) these limits and rights. Examples of these are the penalties for highwaymen, robbers, fornicators etc., and verdicts connected with cases of public domains, charitable foundations, testaments (and bequests) having no legitimate heir. These are some of the most important aspects of viceroyship. Ali Ibn Abî Tâlib, may Allâh bless him, said in this respect: "It is inevitable that there should be an **imârah** (authority), righteous or wicked". He was asked: "O Prince of the Faithful, we understand what a righteous (authority) is; what about the wicked?" He answered: "From this (also) the frontiers are guarded, the highways are rendered secure, the land is defended against the enemy and the **fai'** (revenues from

(1) Limits (Hudûd, plural of hadd) are frontiers or dividing lines. In Muslim Law they are "penalties" imposed on those who overstep the limits between that which Allâh has allowed and that which Allâh has forbidden. Rights are of two kinds: those due to Allâh, forms of obedience to Allâh — forms of worship —, prayer etc., and rights a man owes to his fellow-men.

lands conquered from unbelievers) are distributed among the Muslims".

Cases belonging to this section (limits set by Allâh and rights due to Allâh) should be examined and judged by the rulers without the need of a suit being brought by anyone. Similarly, witness is accepted, although there is no plaintiff to ask for it. Nevertheless, the jurists entertain two different opinions — according to the school of law of Ahmad (Ibn Hanbal) and some other schools — whether it is necessary that the man whose possessions were stolen should demand that these possessions be restored to him. Although all agree that a demand that the stolen possessions be restored is not necessary, some jurists maintain that such demand is necessary to avoid every shadow of doubt (that the said possessions have been stolen and that they have a possessor other than the accused). The penalty (the cutting-off of the thief's hand) should be imposed on the noble and the servant, on the influential and the humble alike. This penalty should not be neglected, neither by intercession nor by bribes nor by any other intervention. Intervention, in this respect, is totally forbidden. Any (ruler) who has neglected the execution of this penalty, while he was able to do so, will be damned by Allâh, the Angels and the whole of Mankind. Allâh will not forgive this ruler, nor will He accept from him either repentance or a compensation (made for the man whose possessions were stolen), since he would be of those who "take a small price for the Messages of Allâh" (prefer money or any worldly possession for the fulfilment of the commandments of Allâh). Abû Dâwûd has related in his *Sunan*, on the authority of 'Abdullâh Ibn 'Umar, may Allâh bless them both, that the Messenger of Allâh, peace be upon him, has said: "He whose intercession has caused the imposition of a penalty, decreed by Allâh, to be neglected, has worked contrary to Allâh's enjoinder; and he who brings before the court a false suit, while aware of the facts, Allâh will continue to be displeased with him, until he desists; and he who speaks

ill of a Muslim, will be confined in the mud of suppuration until he retracts. (The Companions of the Prophet) asked: "And what is the mud of suppuration, O Messenger of Allâh?" — "It is the matter secreting from the bodies of those who are in hell", he said. Here the Prophet, peace be upon him, mentions the rulers, the witnesses and the litigants. These are the persons connected with any judgement.

It is related in the **Two Sahîhs**, on the authority of 'Aisha, may Allâh bless her, that the Quraish Tribe was very much concerned with the case of the woman of the Makhzûm Branch who had stolen (something). Some of them asked: "Who may speak (in her favour) to the Messenger of Allâh? — Some others said: "Who dare do this but Usâma Ibn Zaid?" (Usâma went to the Messenger of Allâh and implored him not to cut off her hand because she was of a noble family, and her family would be dishonoured in consequence). The Prophet replied: "O Usâma, how dare you intercede to suspend a penalty imposed by Allâh? The (power of the) Children of Israel was destroyed because when the most noble of them did steal, they forgave him; and when the weak or humble amongst them stole, they executed the penalty on him. By Whom in Whose hand the life of Muhammad is, if Fâtima, the daughter of Muhammad should steal, I shall cut off her hand".

This story has a great significance: the most important families of the Quraish Tribe were two: Banu Makhzûm and Banu 'Abd Manâf. When this woman deserved to have her hand cut off because of her stealing — having denied that she had borrowed something, as some said, or taking something away wrongfully, as others said — (the Prophet did not forgive her), although she was of one of the two greatest families of the Tribe and in spite of the fact that Usâma Ibn Zaid, who was very dear to the Prophet, interceded in her favour. The Prophet, further, became angry and blamed Usâma Ibn Zaid for having intervened in a matter in which intervention is forbidden by Allâh, that is, intervention with a view to suspending

a penalty imposed by Allâh. Then he gave an example, citing the name of the greatest of the ladies of Mankind — the lady whom Allâh had kept safe from every fault . . . and said: "If Fâtima the daughter of Muhammad should steal, I shall cut her hand off !" It is related that the Makhzûmi woman (who had stolen and had her hand cut off) repented afterwards and used to visit the Prophet, peace be upon him; who granted her all that she asked for. It is related in the Sayings of the Prophet, that if a thief repented (after his hand had been cut off), his hand would precede him to Paradise; if he did not, it would precede him to hell.

Mâlik (Ibn Anas) has related in the *Muwatta'* ⁽¹⁾ that a number of men took hold of a thief and were going with him to (the third Caliph) 'Uthmân (Ibn 'Affân) ⁽²⁾, may Allâh bless him. Az-Zubair ⁽³⁾ (Ibn al-'Awwâm) met them and tried to intercede in his favour. The men said: "When we take him to 'Uthmân, you may then make your intercession in the presence of the Caliph." Az-Zubair said: "No, if (the cases requiring such) penalties are brought before the ruler (no intercession may be offered; otherwise) may Allâh damn the intercessor and the man who accepts intercession".

Safwân Ibn Umayya was once in the Mosque of Medina with his mantle under him. He went to sleep and a thief took

(1) *Muwatta'* is a collection of Hadith compiled by Mâlik Ibn Anas.

(2) 'Uthmân Ibn 'Affân was the third Orthodox Caliph 23-35 A.H. (644-656 A.D.). He was a very wealthy man of the noble family of Umayya in Mecca. He embraced Islam early and spent a great part of his wealth in the cause of Islam. He also married two daughters of the Prophet. He married first Ruqayyâ, and when she died he married her sister Umm Kulthûm.

(3) Az-Zubair was the cousin (son of the paternal aunt) of Muhammad. He fought against Ali Ibn Abi Tâlib at the battle of Jamal 36 A.H. (657 A.D.), and was killed shortly afterwards.

the mantle. Safwân took hold of the thief and brought him before the Prophet, peace be upon him. The Prophet ordered the hand of the thief to be cut off. Safwân exclaimed: "O Messenger of Allâh, you cut off his hand for this mantle of mine; I give him the mantle." The Prophet replied: "You should have forgiven him before you brought him before me." Then the thief's hand was cut off (related in the *Sunan*).

The Prophet, peace be upon him, meant to say to Safwân: Had you forgiven the man before you brought him (as a thief) before me, the matter would have been settled. But after the case has been brought before me, the penalty, pre-imposed by Allâh, cannot be suspended, neither by an intercession nor by making a gift (of the thing stolen) nor by any other proceeding. Consequently, the jurists agreed, so far as I know, that once the highwayman, the thief and the like have been brought before the man in authority, the execution of the penalty imposed on them cannot be stayed, even though they may have repented. The penalty should be carried out in spite of their repentance. If their repentance were sincere, it would be an atonement of their (sin); and their consent to the execution of the penalty would add to the perfection of their repentance — equivalent to restoring (the stolen objects) to their original possessors and a completion of punishment (of the aggressor) which is the right of (injured) human beings. This has its source in the Saying of Allâh: "Whoever intercedes in a good cause has a share in it, and whoever intercedes in an evil cause has a portion of it. And Allâh is ever Keeper over all things" (IV 85). Intercession, in fact, is an aid to the man who asks for it, so that both (the intercessor and the interceded for) become alike (in responsibility, deserving the same punishment or the same reward, as concluded from the previous Verse of the Qur'ân). So, if you helped someone in righteousness and piety, that would be good intercession; and if you helped him in sin and aggression, that would be evil intercession.

Righteousness is anything you are enjoined (by Allâh) to do; sin is anything you are forbidden to do.

On the other hand, if they (the highwayman the thief, etc.) were insincere (in their repentance), then Allāh would not guide them. In this respect, Allāh, be He exalted, has said: "The only punishment of those who wage war against Allāh and His Messenger and strive to make mischief in the land is that they should be murdered, or crucified, or their hands and their feet should be cut off on the right and on the left or they should be imprisoned. This shall be a disgrace for them in this world, and in the Hereafter they shall have a grievous chastisement" (V 33-34).

Allāh has excepted only those who repent before they are arrested and brought before the judge. But the man who repents after arrest is still included in those who ought to be punished, as the law is intended for general application and as is understood from the aim and interpretation of the law. This is the rule if the culprit is convicted; but if he confesses (before the judge), or if he comes (of his own accord) to confess (before the judge), after he has repented, his case will be the subject of a discussion mentioned elsewhere. Apparently, according to the school of law of Ahmad (Ibn Hanbal), penalty is not executed in such a case, unless the culprit himself demanded that penalty be executed. If he, on the contrary, left the court (after a voluntary confession), no penalty then would be carried out. In this spirit one should interpret the Tradition (related from the Prophet on the authority) of Mā'iz Ibn Mālik: "... Why have you not let him (the accused) go?", as well as the Tradition which contains the words: "a case has come before you, so impose the penalty (on me)!", together with other Traditions.

We read also in the *Sunan* of Abū Dāwūd an-Nasā'ī, on the authority of 'Abdullāh Ibn 'Umar, that the Prophet, peace be upon him, has said: "Resort to a mutual pardoning among yourselves (beforehand); if a penalty is referred to me, it should be carried out". And in the *Sunan* of an-Nasā'ī too and the *Sunan* of Ibn Māja, on the authority of Abī Huraira, we read that the Prophet, peace be upon him, has said: "A penalty executed in this world is better for the population of the Earth than to have rain

on forty mornings". This is so because sins may produce a decrease in crops and an increase in the fear of the enemy, as is clear from the Qur'ān and the Tradition. If penalties were executed (justly), people would obey Allāh more, and so sins would decrease. This, in turn, would lead to an abundance of supplies and a (hope of) victory.

It is not permitted that sums of money be taken from a fornicator, a thief, a drunkard, a highwayman or the like to exempt them from penalties; no matter whether that money was to go to the state treasury or to any (charitable foundation). This money which is intended to suspend penalties is evil and ill-gotten money. If any ruler accepted such money, he would be committing two great mischiefs: neglect of the law (executing the penalty) and earning ill-gotten money; he would be discarding what is enjoined and committing what is forbidden. In this respect, Allāh has said (of other nations): "Why do not (their Divine) teachers and (their) doctors of law prohibit them from their sinful utterances and from their unlawful gain? Certainly evil are the works they do" (V 63). Of the Jews in particular, Allāh has said: "Eager to listen to falsehood and tolerant in regard to ill-gotten money" (v 42), since the Jews used to tolerate ill-gotten money, sometimes called bribery and sometimes a present, etc. And whenever a man in a public function agrees to ill-gotten money (a bribe, for instance) he will have to accept lies told to him. The Messenger of Allāh has condemned the briber, the bribee and the middleman between the two (related in the *Sunan*).

We read in the *Two Sahihs* that two men came with a suit before the Prophet, peace be upon him. One of them said:

— O Messenger of Allāh, judge our case according to the Book of Allāh (the Qur'ān).

The other, who was more versed in the law, said:

— Yes, O Messenger of Allāh, judge our case according to the Book of Allāh and give me permission (to speak).

— Speak, said the Prophet.

— My son was a domestic in the household of this man, that is, a servant. He committed adultery with this man's wife. I paid this man a compensation of a hundred ewes and a servant. Afterwards, some learned men told me that my son would have to suffer one hundred stripes and one year's exile, while the wife of this (man) should suffer stoning.

— By Him in Whose hand is my life, said the Prophet (to the young man's father); I shall judge between you according to the Book of Allāh: the hundred (ewes) and the servant are to be restored to you; your son shall suffer one hundred stripes and one year's exile; and tomorrow morning, you go, O Unais, to the wife of this (man) and demand of her the truth. If she confess, (you) stone her.

(Unais) asked the wife; she confessed and he stoned her.

In this Tradition it is explicitly indicated that the Prophet did not agree that a sum of money be paid **instead of the** punishment of the culprit, in order to have the penalty imposed on him, suspended: he ordered the sum to be refunded to its owner and that the culprit suffer the penalty imposed. The Prophet, further, did not agree to appropriate the money for the state treasury nor to spend it on the warriors. The Muslims are unanimous in that a suspension of penalty, in return for a sum of money or other benefit, is not allowed. They are unanimous, too, that the money accepted from a fornicator, a thief, a drunkard, a revolter against Allāh and His Messenger, a highwayman, etc., to suspend the penalty imposed on them, is evil and ill-gotten money.

A great part of the discord affecting the affairs of the people has its source in the suspension of penalties in return for a sum of money or through the favour of some influential man. This is the major cause of discord in the nomad districts, in the villages and in the provincial capitals among the Beduin (Arabs), the Turkomans, the Kurds and the peasants. It also causes discord among the partisans of racial factions (and of political parties and religious sects), such as the Qaisites (the

Arabs of the North who are antagonistic to the Arabs of the South) and the Yamanites (Arabs of the South), as well as among the inhabitants of the Capital, whether they are chiefs, and nobles, poor or princes, spokesmen or soldiery. In fact, this is the reason for the ruler's loss of prestige and respect and the cause of his weakness towards his subjects. When a ruler accepts a bribe in return for the suspension of a penalty, he cannot have the authority to impose a penalty when another case arises. And so he becomes, in this respect, one of the damned Jews. In popular Arabic bribery is also called **bartil**. **Bartil**, originally, is an oblong stone; and bribery has been named after it because it shuts the mouth of the bribee from telling the truth, as would the **bartil** (the oblong stone) in the concrete sense. It is related in the Tradition: "When the bribes enter through the door, honesty flees through the skylight." In the same category is the money wrested by the ruler in the name of the state treasury; it is ill-won money named fines! An example of that is the case of the mischievous Beduins who plunder the possessions of some people; and later, come the viceroy with a present of horses or of something else. Afterwards, their greed for plunder and mischief is so intensified that the whole prestige of the viceroyalty, and of the state too, collapses, and corruption reigns in the whole community.

Other examples may be cited from the peasantry and other classes of society. Furthermore, if a drunkard were arrested and then released on payment of a sum of money, (his release, in this way) would encourage the wine-merchant (to carry on open trade). If the traders were arrested, they would, then, pay some money and be released. The money taken by the ruler in this way is ill-gotten money.

In the same category are the influential people who give protection to culprits against the execution of penalties imposed on them. A peasant, for instance, commits a crime and takes refuge in a village belonging to the **nā'ib** (the dignitary in the province next to the sovereign) or to a prince. There he may

enjoy a protection which overrules the commandments of Allâh and His Messenger. Such protectors belong to those damned by Allâh and His Messenger. Muslim has related in his *Sahîhs*, on the authority of Ali Ibn Abî Tâlib, may Allâh bless him, that the Prophet, peace be upon him, said: "Damned is he who commits a breach of faith and he who gives him protection." Thus anyone who gives protection to one of those committing breaches of faith is damned by Allâh and His Messenger. And if the Messenger of Allâh has said: "He whose intercession has suspended a penalty set by Allâh is a revolter against Allâh and His commandments", what would be the condition of the man who obstructs altogether, by his power and action, the execution of this penalty, especially if he has taken from the criminal a sum of money in return for such protection? Still worse is the neglect to execute penalties on the people of the country-side in return for some money taken, openly or secretly, for the state treasury or for the ruler himself. The greatest corruption is produced by such influential people who accord protection to the aggressors of their respective districts, by personal influence or with money (they pay to the ruler). All this is unlawful by consensus of all Muslims.

Similar to that too is the money shared with the owners of disorderly houses or with those who conduct wine traffic. People of such occupations and helpers of such people, in return for money, belong to the same category. Money taken in this way is exactly the same as the price of a harlot, the gift to a fortune-teller, the price of a dog or the wage of the middleman in illicit intercourse, called pander. The Prophet, peace be upon him, has said: "The price of a dog is something bad, the dot to a harlot is also bad and the tip to a fortune-teller is something bad" (related by Bukhârî).

The dot given to a harlot is called debasement (*hudûr*) of the prostitutes. Similar to it is anything given to the effeminate boys, whether slaves or freemen, after sexual intercourse. And the tip to a fortune-teller is like the tip to the astrologer and

those who pretend to be able to foretell events.

If the officials neglected to renounce these abominations and to execute the penalties relative to them — in return for money appropriated — these officials would be in the same category as the chiefs of robbers who share with the highwaymen the capture they make, and as the pander who receives money in order to facilitate the meeting of two persons in illicit intercourse. He would also be like the bad old wife of Lot who used to lead the wantons to the guests of her husband. Of her, Allâh has said: "So We delivered him and his followers, except his wife — she was of those who remained behind" (VII 83), (in the village to be destroyed by the raining fire). Allâh has also said, addressing Lot, (in two Verses of the Qur'ân, xi 81 and xv 65): "Lead forth therefore thy family in the dead of the night; follow thou on their rear: and let none of you turn about; except your wife (she should be left behind in the village to be destroyed with the rest of the people indulging in sodomy). Surely whatever befalls them shall befall her."

Allâh has tormented the wicked woman, the pandress with the same torment as he imposed on the people who practised pederasty. This comparison is valid because in all these cases money is appropriated to aid sin and transgression. The ruler is there to enjoin good and forbid evil — this is expected of him in his position. But if he helps the evil-doers in return for money, he is not behaving in the way expected of him. He is like a man whom you send against your enemy and he turns against you, or he is like the man who is financed (by the State treasury) to fight for Allâh and instead he fights the Muslims! This is explained by the fact that the well-being of the community rests on "enjoining good and forbidding evil". The well-being of the community and the good conditions of life are (the result) of obedience to Allâh and to His Messenger; and obedience to Allâh and His Messenger is never perfect except when "enjoining good and forbidding evil". Because of this, the Muslim community was the best community for

men (to lead them in the straight path): "you enjoin good and forbid evil and you believe in Allâh" (III 109). Allâh has also said: "And from among you there should be a party who invites to good and enjoins the right and forbids the wrong" (III 103). He has said too: "And the believers, men and women, are friends of one another. They enjoin good and forbid evil" (IX 71). And of the Children of Israel Allâh has said: "They did not forbid one another the hateful things they did. Evil indeed was what they did" (V 78). He has also said: "And when they forgot their warnings, we delivered those who had forbidden evil; and we inflicted a severe chastisement on those who had done wrong, for they were evil doers" (vii 165).

Allâh has here mentioned that when chastisement has fallen (on the Jewish community), He delivered those who used to forbid evil and inflicted, on those who were not just, a severe torment. In an authentic Tradition it is related that Abû Bakr (the first Caliph), may Allâh bless him, delivered a sermon in the pulpit of the Messenger of Allâh, peace be upon him, (in Medina) and said: "O people, you read the following Verse (of the Qur'ân) but you do not understand it rightly: 'O you who believe, take care of your souls — he who errs cannot harm you when you are on the right way' (V 105). I have heard the Messenger of Allâh, peace be upon him, say: 'If the people witnessed the abominable but did not try to redress it, Allâh would be nigh to inflict on them all a severe torment'".

In another Tradition we read: "A sin, when in shade, harms none but the sinner. If it becomes public, and none has renounced it, it will generally harm the people."

This part, treating of the penalties set by Allâh and the rights due to Allâh, and which we have discussed (in the preceding pages) has one principal aim: "enjoining good and forbidding evil." "Enjoining good" is (to look after the enforcing of Allâh's orders regarding) prayers, alms, fasting, pilgrimage, truthfulness, honesty, obedience to the parents, maintaining close relations with members of the family, friendly associations

with the relatives and the neighbours, and the like. It is the duty of any man in authority to order all people under his jurisdiction to preserve prayer and to punish those who neglect to pray. (He is called upon to do that) by consensus of all Muslims. If those neglecting to perform prayer were a rebellious group, they should be fought. All Muslims are unanimous on that. They should also be fought if they discarded *zakât*-alms, fasting and similar (religious duties). They should likewise be fought if they violate certain laws which have been explicitly and unanimously agreed upon, for instance the laws prohibiting marriage with very close relatives; or if they cause general mischief. Also, every (Muslim) group refusing to accept the laws of Islam which have been generally accepted and explicitly related (from the days of the Prophet), ought to be fought against until Islam becomes once more the only religion (in the community), as agreed to by all the jurists.

If those neglecting prayer were individuals, the situation would be different. Some (jurists) say that the individual neglecting to pray should be punished by beating or by imprisonment until he resume performing prayer. The majority of jurists maintain that such an individual is asked first to repent and to resume performing his prayers; if he insists on his attitude (of refusal to perform prayer) he ought to be killed. In this case, there is a difference of opinion regarding his religious status: is he an infidel or a heretic Muslim? Most of the early jurists asserted that he was an infidel (who practically denied Islam by refusing to perform prayer) and so he deserved to be killed. This difference of opinion holds true if the individual admitted that prayer was a duty but he did not perform his prayers out of simple neglect. But if he declared that prayer was not a religious duty, he is considered an infidel by consensus of all Muslims. He is also an infidel who rejects any of the above-mentioned duties or (commits any of the) forbidden actions of which (neglect or commitment, as the case may be) necessitates fighting (of the defier of the law).

Punishing those who neglect the duties or commit prohibited actions is the aim of fighting in the cause of Allāh; fighting them being the duty of the whole community, as unanimously agreed upon and as is clear from the Book (Qur'ān) and *Sunna* (behaviour of the Prophet); this being the best of all actions. A man said to the Prophet: O Messenger of Allāh, indicate to me an action equivalent to fighting in the cause of Allāh. The Prophet said: You cannot endure it! The man said: Tell me of it. The Prophet asked: Can you (during the absence) of the fighter in the cause of Allāh (on an expedition) fast without a break and keep awake (night and day, in prayer) without slackening? The man replied: And who can endure this? The Prophet answered: That is the action equivalent to fighting in the cause of Allāh! Another parable is related from the Prophet. In it the Prophet has said: "There are in Paradise one hundred grades, between every grade and that next to it is a distance like that between Heaven and Earth, all of which are consecrated (exclusively) to those who fight in the cause of Allāh" (both Traditions are related in the *Two Sahihs*).

The Prophet, peace be upon him, has said (making use of metaphors borrowed from the camel): "The head of the great affair (of life) is Islam, its (vertebral) column is prayer and the uppermost point of its hump, is fighting in the cause of Allāh." In this respect Allāh has said: "The believers are those who believe only in Allāh and His Messenger. Then they doubt not, and struggle hard with their wealth and their lives in the cause of Allāh. Such are the truthful ones" (XLIX 15). He also said: "Do you hold the giving of drink to the pilgrims and the maintenance of the Sacred Mosque ⁽¹⁾ equal to (the

(1) Maintenance of the sacred mosque: looking after the Ka'ba (in the way of construction, repair, etc.). The Qur'ānic Verse quoted means: those who do business by looking after the Ka'ba (made sacred by Allāh) — the custodians of the Ka'ba used to sell water and food to the pilgrims and to give them shelter for money — cannot be equal, in the eyes of Allāh, to those who serve Allāh sincerely and disinterestedly.

service of) one who believes in Allāh and the Last Day and strives hard in Allāh's way? They are not equal in the sight of Allāh. And Allāh guides not the iniquitous people. Those who believed and fled (their homes), and strove hard in Allāh's way with their wealth and their lives are much higher in rank with Allāh. And it is these that shall triumph. Their Lord gives them good news of mercy and pleasure, from Himself, and Gardens wherein lasting blessings will be theirs. They shall abide therein for ever. Surely Allāh has a mighty reward with Him" (IX 19-22).

CHAPTER TWO

Punishment of Muhâribîn ⁽¹⁾ and Highwaymen

Similar to that ⁽²⁾ is the punishment which should be inflicted on those who war against Allâh and His Messenger and on the highwaymen. These are usually Beduins, Turkomans, Kurds, countrymen, soldiers of fortune or wicked men of the capital, who attack people on the highways and in deserted places and strip them of their possessions by force of arms, even in daylight. Concerning these Allâh has said: "The only punishment of those who wage war against Allâh and His Messenger and strive to make mischief in the land is that they should be murdered or crucified, or their hands and their feet should be cut off on opposite sides ⁽³⁾, or they should be imprisoned. This shall be a disgrace for them in this world, and in the Hereafter they shall have a grievous chastisement" (V 33). ash-Shâfi'î, may Allâh forgive him, has related in his *Sunan* or *Musnad* (a verdict) going back to Ibn 'Abbâs ⁽⁴⁾, may Allâh bless him, regarding the highwaymen.

If they killed their victims and plundered their possessions, they should be killed and crucified; if they killed their victims but did not plunder their possessions, they should be

- (1) Muhâribîn: (warriors against Allâh) are those who, though they are Muslims, oppose by revolts against the lawful head of the state and by disturbing the public order hinder that the Religion of Allâh be established.
- (2) See the preceding chapter, p. 81 *Bartil*.
- (3) Limbs cut off on opposite sides or alternately: cutting off the right hand and left leg (if limbs were cut off on the same side, then the mutilated could not walk even with crutches).
- (4) Abdullâh Ibn 'Abbâs: the cousin of the Prophet. He was very much versed in the explanation of the Qur'ân.

killed but not crucified; if they plundered the possessions but did not kill the victims, their hands and feet should be cut off on opposite sides. If they only terrorised the district without plundering, they should be banished from the land ⁽¹⁾.

This is the opinion of many of those versed in the law, such as ash-Shâfi'î and Ahmad, and is similar to the opinion of Abû Hanîfa, may Allâh forgive him. Others have said that the Imâm (the sovereign or his representative) may hold a personal opinion of them: he may condemn to death any one of them if it is in the general interest, and though the condemned may not have killed (his victims), but was perhaps very influential among his followers (and without whom the followers might not have been in a position to terrorise the land). The Imâm may also cut off the hand and foot of the highwayman alternately, though he may not have plundered any possessions, but in order to prevent him from further plundering. Some other (learned men versed in the law) are of the opinion that a highwayman should be killed, should have a hand and a foot cut off alternately and should be crucified. The former opinion, however, is the one more generally accepted.

If one of those who makes war against Allâh and His Messenger should kill a man, the Imâm should kill him — as decreed by Allâh — and no pardon should be accorded to him, as agreed to by all jurists, and as Ibn al-Mundir ⁽²⁾ has related. The case of a highwayman who has killed a man is not referred to the heirs of that man, as would be the case when a man kills another because of a personal enmity or quarrel or any other private cause. The latter case concerns the heirs of the victims: if they chose they might kill (the murderer) or pardon him, or they might accept blood-money; because the motive for the killing was private. On the other hand,

- (1) Banished from the district they had terrorised.
- (2) Muhammad Ibn Ibrâhim Ibn al-Mundir d. about 324 A.H. (936 A.D.) was versed in the science of jurisprudence.

those who war against Allâh and His Messenger are of a different category: they kill people to get the possessions of their victim. These are similar to the robbers, and their punishment is a penalty set by Allâh. This is agreed to by all jurists, even though the murderer and the victim were not of the same social standing, for example if the murderer was a freeman while the victim was a slave. If the difference in status was religious: the murderer (for example) being a Muslim while the victim was a *dimmi* (Jew or Christian living in the Islamic State) or *musta'min* (non-Muslim who has asked for protection in the Islamic State), a little variance of opinion is maintained among the jurists. The majority of them assert that the murderer (in these circumstances) should be killed, because his crime engenders corruption which is (usually) punished by inflicting on the criminal the penalty set by Allâh. His hand and his foot would be cut off alternately if he plundered the possessions of the victims, or he would be imprisoned if he refused to settle the debts of his creditors.

If the highwaymen are organized into a band, of which one member only does the killing while the others are helpers and supporters, the one who commits the crime should be punished by death — according to the views of a few jurists. The majority of jurists, however, maintain that all the members of the band should be punished by death, even though there may be a hundred of them, since the killer and his supporters are all responsible. This is the verdict related from the (four) orthodox Caliphs. Umar Ibn al-Khattâb, may Allâh bless him, punished by death the *rabî'ah* (look-out men) of the highwaymen.

The *rabî'ah* is the look-out man (or picket) who watches from a high place so that he can inform the others of approaching (men and caravans). Furthermore, the man who does the killing is only able to do it because of the strength of his supporters. Therefore, when the members of a group depend on each other so that they act as one, they should share the same

reward or the same punishment as would, (but on a different level) the warriors in the cause of Allâh.

The Prophet, peace be upon him, has said: "The Muslims are equals in birth ⁽¹⁾: the most humble of them (in the eyes of others) speaks in their name; and they are hand to hand in the face of other (people); and a detachment (of their army) is a protection of their headquarters." That is, when the Muslim army sends a detachment on an expedition and it acquires some booty, this booty is shared by all the soldiers in the army, because it acquired this booty only through the backing and support of the army. The soldiers of the detachment are, however, given a bigger share than their fellows in the army. The Prophet, peace be upon him, used to give such a detachment one quarter of the remaining four fifths ⁽²⁾, at the beginning of the campaign. If the detachment was commissioned after the whole army has returned to its original base, it was awarded one third of the remaining four fifths. Similarly, if the main body of the army acquires booty while a detachment of it is on an expedition, then the soldiers of the detachment share that booty with the army, because the expedition was in the interest of the whole army. During the Battle of Badr ⁽²⁾,

- (1) The Muslims are equal in birth: none is preferred to the others because of a nobler birth (because he is of a more famous or of a richer family).
- (2) Booty is divided into two unequal parts: one fifth of it goes to the state treasury, and four fifths are subdivided after the battle among the warriors still living. If one warrior or a group of warriors accomplished an exceptional feat, then they are given an extra share from the four fifths destined for the warriors.
- (2) Badr is a well at some distance from Medina. It was the scene of the first battle between the Meccans and the Muslims 2 A.H. (624 A.D.).

the Prophet, peace be upon him, sent Talha ⁽¹⁾ and az-Zuhair on an expedition in the interest of the army and then gave them their shares (of the booty won by the army during their absence). Another example is when the Muslims fight one another because of racial zeal or in defence of pre-Islamic (pagan) ideals. Such fighting is usually carried on by the Tribes of Qays and Yaman ⁽²⁾ (North Arabs and South Arabs) and is unjust. In this respect, the Prophet, peace be upon him, has said: "If two Muslims encountered each other with swords in their hands, the killer and the killed go to Hell". The Companions inquired: "O Messenger of Allâh, this is (the logical fate of) the killer, why should the killed?" The Prophet said: "He was eager to kill his opponent" (quoted in the *Two Sahihs*).

Each of the two fighting (Muslim) groups is responsible for the losses of the other group in lives and materials. As the members of the group are dependent on each other, it is treated as a single person. But if they (the members of the groups) only plundered the property, killing nobody, as the Beduins often do, then every one (in these two groups) should suffer the cutting off of his right hand and left leg, as most of the learned men in law, like Abû Hanîfa, Ahmad, ash-Shâfi'î and others are agreed on. This is the meaning of the Saying of Allâh, be He exalted: "... or that their hands and legs be cut off alternately" ⁽³⁾: the hand with which he strikes and the leg with which he walks.

(1) Talha Ibn 'Uбайдullâh d. 39 A.H. (659 A.D.) was a famous Meccan who embraced Islam early. He took part in many expeditions at the time of the Prophet, and in the battle of Uhud he protected the Prophet when the Muslims were defeated.

(2) Qays and Yaman: (tribes of Northern and of Southern Arabia). These two branches were hostile to each other in pre-Islamic times. In the Umayyad period their hostility broke out again and continued until the last century.

(3) See p. 88 footnote 3.

The severed hand and leg are to be cauterized with boiling oil, or something similar, to stop the blood lest the mutilated man dies of haemorrhage. Similarly the severed hand of the thief should be cauterized with (boiling) oil. This punishment does, perhaps, more to restrain wrong-doers than capital punishment. When the Beduins and the adventurous soldiers see among them one with his hand and foot cut off alternately, they are reminded of his crime and restrained from committing a similar one; unlike the penalty of death which is soon forgotten. Some haughty persons, however, prefer the penalty of death to this legal mutilation.

But if the highwaymen brandished their swords only, without killing anybody or plundering any property, then sheathed them, or fled from the battle scene, or threw away their lances, they should be banished from the land. 'To be banished the land' is to be pursued and prevented from settling in any place. It means (according to others) to be imprisoned. Another interpretation gives the meaning "what the sovereign deems fitter: exile, imprisonment or anything of the kind."

The lawful way of putting (such a criminal) to death is by striking the neck with a sword or similar (instrument). This is the quickest way to carry out the execution. Allâh has also considered this manner of putting to death in the slaughter of cattle and (of hunted) game ⁽¹⁾, if the hunter reaches the game before it dies. The Prophet, peace be upon him, has said in this respect: "Allâh has enjoined perfection in every action, so when you put any (condemned) to death, do the putting to death well, and when you slay (cattle) do the slaying well. Let everyone of you sharpen well his knife and relieve quickly his

(1) When a hunter shoots a bird or a hare, etc., he should also slaughter it (if he reached it while it is still alive). If the bird, the hare, etc., dies before the hunter reaches it, it is considered pure (eatable from the standpoint of Islam), provided blood has flowed from it.

slain (animal), (related by Muslim). The Prophet has said also: "The most honest in the manner of (lawful putting to death) are the true followers of the Faith."

The crucifixion mentioned above is the raising of the condemned on a high place, so that the people may see them, and their (guilt and punishment) are thus made known. Crucifixion takes place after the criminals are put to death, as agreed to by the majority of the learned men in law. Some learned men are of the opinion that the criminals are crucified and die while suffering crucifixion.

Certain jurists say that the condemned may be killed in a way other than striking by the sword; they even allow that the condemned may be left raised on (a trunk or gibbet on) a high place until they expire in agony without being killed. Mutilation is not permitted when a person is condemned to death. It is only allowed when there is no intention of executing him. Bearing on this, 'Imrân Ibn Husain, may Allâh bless him, has related: "Every time the Messenger of Allâh, peace be upon him, has made among us a public speech he has ordered us to distribute alms and forbade us to exercise mutilation." Even the infidel, we do not disfigure their bodies after we have killed them; we do not cut off their ears or their noses; we do not cut through their bellies, unless they have done this to those of us (who fell on the battle-field), then we make retaliation on them and mutilate the bodies of their dead. But to refrain from that is better, as Allâh has said: And if you take your turn, then punish with the like of that with which you were afflicted. But if you show patience, it is certainly best for you. And be patient, and thy patience is not but by (the help of) Allâh" (XVI 126-127).

It is said that this Verse was revealed when the Arab Heathens disfigured the bodies of Hamza ⁽¹⁾ and others, may

(1) Hamza, the uncle of the Prophet, fell in the battle of Uhud 3 A.H. (625 A.D.). His body was mutilated by the pagan Meccans.

Allâh bless them all, after the Battle of Uhud. On that occasion, the Prophet, peace be upon him, said: "If Allâh will give me victory over them, I shall inflict on them, in the way of retaliation, twice as much as they inflicted on us." So Allâh revealed this Verse (to order the Muslims to refrain from retaliation). This Verse may belong to the period of Mecca ⁽¹⁾ — like the Verse: "And if they inquire from you about the soul; say (to them, O Muhammad): the soul belongs to (the realm of knowledge of) my Lord" (xvii 85), or like the Verse: "And keep up prayer at the two ends of the day and in the first hours of the night; then the good deeds drive away the evil deeds" (xi 114), as well as other Verses which were (definitely) revealed at Mecca. Later, an occasion necessitated (that the Prophet and the Faithful) be addressed (in a similar manner), so the same Verse was revealed anew.

(When the first Verse in question: "And if you take your turn..." was revealed), the Prophet, peace be upon him, said: "Yes, we shall have patience!"

It is related in the *Sahih* of Muslim, on the authority of Buraida Ibn al-Khasib, may Allâh bless him, that any time the Prophet, peace be upon him, sent a commander at the head of a detachment or a whole army (on an expedition) or on any other errand, he always advised him to have fear of Allâh and to take good care of the Muslims under his command. Then he used to address (all the men on the expedition as follows): "Proceed to war, in the name of Allâh and in His cause; fight those who have disbelieved in Allâh, but do not act with dishonesty nor betray (those with whom you come to an agreement) nor mutilate (your opponents, dead or alive) nor kill a child."

(1) Revelation of the Qur'ân continued for twenty-three years (the term of prophecy of Muhammad): thirteen years in Mecca (called Meccan period) and ten years in Medina (called Medinese period).

Let us go back to the question of highwaymen and robbers. If these attacked the people by the force of arms in the populated districts, and not in the desert, to plunder or loot, then they are not, in the opinion of some authorities, warring against Allâh and His Messenger. They are house-breakers and plunderers, because those attacked could get help if they called for it. The majority (of jurists), however, consider the attack in populated districts and in the desert as one. This is the widely known opinion of Mâlik, of ash-Shâfi'i and his school, of the majority of the followers of the school of Ahmad and of some of the followers of Abû Hanîfa.

An attack in a populated district should call for a more severe punishment than an attack in the desert. A populated district is a place for safety and tranquility, as well as a place where people are expected to help one another (against a common enemy). So, if some (inhabitants of the same district or of another) did make an attack therein, there would be fierce fighting. Moreover, when a man is attacked in his own house, he is usually stripped of all his property, while a traveller often carries with him only a small part of his possessions. To me, this is the correct view, especially when it comes to those professional robbers called, popularly, in Syria and Egypt *man-sar* (band of brigands); in Baghdâd they were known as 'ayyârûn (stragglers) ⁽¹⁾.

If the house-breakers and robbers attack their victims with clubs or with stones hurled with the hand or with a sling, they are also warriors against Allâh and His Messenger. Certain jurists, however, maintain that 'warriors against Allâh' can only be those who use a sharp instrument; others assert that they can also be those who make use of a sharp, cutting instrument or of a heavy crushing weight. Setting aside the difference in opinion of the jurists, the attitude considered by the

(1) 'Ayyârûn, in fact, are poor people who prefer not to have an occupation but to earn their living by procuring the things they need gratis either gently or otherwise.

Muslims, generally, to be correct is that any man who attacks others to plunder their possessions, no matter how he does it, is a warrior against Allâh and a highwayman. Also any infidel who fights the Muslims, no matter how, is a belligerent. Furthermore, any Muslim who fights the infidels with a sword, with a spear, with bow and arrows, with a stone or a club, is a warrior in the cause of Allâh.

The assassin, on the other hand, is one who kills people secretly to steal their possessions. He may do it in two ways:

- (a) by renting (hiring) a *khân* (stopping place for travellers) where he receives wayfarers. As soon as these wayfarers are all alone, he seizes the opportunity: attacks them, kills them and takes their possessions;
- (b) or by calling to his house someone whom he hires for a service: a tailor to cut a dress for him (or for someone of his household), or a physician; then he kills him and strips him of his money.

This (manner of putting to death) is called killing (murder, assassination); and those who are killed in this way are given, by the common people, the name: *mu'arrijin* (occasional visitors).

Suppose the murder was committed with the sole intention of appropriating the money of the victim, would the murderer in this case be a "warrior against Allâh" or would he be subject to the law of retribution only? The jurists hold here two different opinions: some of them maintain that the assassins are also "warriors against Allâh", because killing slyly is like killing in an open attack, since the victim in both situations cannot defend himself. The former killing, however, may be worse, as the victim is overcome while he is unaware of what is going to happen. The second opinion is that a "warrior against Allâh" is only the man who attacks people openly. The punishment of the assassin, therefore, should be the affair of the victim's heir (not that of the state). The former opinion, nevertheless, is more in conformity with the spirit of Islamic

law, since the injury inflicted in this way is far greater because it comes unexpectedly.

The jurists have a difference of opinion also as regards those who kill the sovereign: the assassins of 'Uthmân and 'Alî, for instance. Are these to be considered "warriors against Allâh" and should they, therefore, suffer the death penalty (as set by Allâh) or should their case be left to the victim's heirs? The two different opinions figure in the school of law of Ahmad Ibn Hanbal as well as in other schools. They note, however, that killing the sovereign usually leads to a general disturbance.

CHAPTER THREE

The Duty of the Muslims if the Sovereign Pursued the "Warriors Against Allâh" and the Highwaymen but they Evaded his Pursuit

All that (we have seen in the previous chapter holds true) if (the highwaymen) are arrested. But if the sovereign and his viceroys pursued them to (seize them and to) execute the legal penalty imposed on them, and the highwaymen defied the pursuit, then it is the duty of all the Muslims, by consensus of all the men versed in the law, to fight them until they yield. If the only way to crush the highwaymen is by a war of annihilation, then it should be waged even though they had not as yet killed anyone. The highwaymen should be killed in any manner possible, in the neck or elsewhere. Those who fight at the side of the highwaymen or shelter them or give them aid should also be fought in the same way. This (fighting) is war (which knows no restriction) while the other was legal penalty set by Allâh (and ought to be carried out in a lawful manner).

Fighting these bands of (Muslim) highwaymen is more important than fighting the communities outside the Faith of Islam. These (highwaymen) have organized themselves in bands which bring corruption among the people and of the possessions of travellers and work havoc among the fields and flocks; they have no intention of introducing a religion or setting up a kingdom. Further, they are like the "warriors against Allâh" who betake themselves to a fortress, to a cave, to the summit of a mountain, to a deep valley or a similar place, robbing anyone they happen to encounter. And when the soldiers of the sovereign come to them asking them to return to the Muslim community and submit to the legal penalty, they fight the soldiers and frequently defeat them. These are similar to the Beduins who waylay the caravans of the pilgrims;

or like the **mountaineers** who betake themselves to the summit of the mountains or to the caves for plundering; or they are like the **allies** who came to an understanding to intercept the individuals and groups travelling between Syria and Iraq, and who are also called **an-nahida** (perhaps **an-nâhida**: those who advance hand in hand).

All these groups should be fought, as we have said, but not in the way infidels are fought — unless they were themselves infidels — nor should their property be confiscated, unless they have taken others' properties illegally. The whole group is held responsible for what its members have taken and is asked to refund it, though the person (or persons) who plundered the properties in question are not known — (all the members of the group) are collectively responsible. The helpers and supporters share the same responsibility. If the plunderer of a certain property was, however, known, he would be personally responsible for returning the property to its owners. If the owners were not known, then the property refunded would be added to the treasury and spent on matters of general interest to the Muslims, such as the payment to the soldiers who had subdued the highwaymen.

The principal aim of fighting such groups is to carry out the penalties imposed on them and to prevent them causing further trouble. If one of them is gravely wounded in the fight he should not be put to death unless he already deserved the death penalty; and he who runs away and spares us the trouble of dealing with him further should not be pursued unless he deserved a penalty; and he who is captured should suffer the same penalty as his companions (and equals in mischief).

Some jurists are more severe in dealing with the highwaymen: they consider the highwaymen's possessions acquired in the fight as booty, of which one fifth should go to the state treasury. Most of the jurists, however, do not share in this opinion. But if the highwaymen took refuge in a non-Muslim state and made common cause with its community — siding

with it in the fight against the Muslims — then they would be fought because they had begun a fight against the Muslims.

The man who does not commit highway robbery but takes tolls from the passers-by — from individuals, animals or loads — is not a highwayman but an illegal tax-gatherer on whom the penalty of the illegal tax-gatherers should be imposed. The jurists hold different opinions as to whether he should be killed or not, as he is no highwayman, since he does not obstruct the highway. In spite of that, he will — in the hereafter — suffer the severest chastisement. With regard to this, the Prophet, peace be upon him, has said, referring to a guilty woman of the Tribe of Ghâmid: "She repented so sincerely that an illegal tax-gatherer, in her place, would have been forgiven all his sins."

If a band of highwaymen should attack a company of travellers, these travellers are lawfully permitted to fight in defence of themselves and of their possessions. This is agreed by all Muslims. They should not deliver to the band any amount of money, big or small, if they were able to engage the band in a fight. As regards this, the Prophet, peace be upon him, has said: "He who is killed in defence of his property is a martyr; he who is killed in self-defence is a martyr; he who is killed in defence of his Faith is a martyr; and he who is killed in defence of his (family) honour is a martyr".

The jurists call such a man (the illegal tax-gatherer) **çâ'il** (assailant); he is an aggressor whose action cannot be defended in any way: he is neither commissioned to collect taxes, nor has he any excuse (need, for instance) for doing so.

If such a man wanted money, his demand should be refused; if fighting was the only possible means of resisting him, then he should be fought. But it is also permitted to give him a sum of money in order to avoid fighting with him. If he wanted to violate a woman or a boy, he should not be allowed to do so in any circumstances. A man may surrender some of his money or goods (or all, in return for his personal safety), but

he may not give himself or any of his family over to dishonour.

If the highwaymen's sole intention is murder, would it then be the duty of the attacked to defend themselves if they have a choice? — The jurists of the school of Ahmad and of some other schools entertain two opinions on this. Both of those opinions might be valid if the Muslim land was under one sovereign. But what about the times of civil disorder — May Allāh spare us that! — when two powerful men in the land of Islam contend for supremacy? If one invaded the country of the other and put that country's people to the sword, should a man defend himself (and his political conviction) in that turmoil or should he surrender and give up fighting? Here also the learned men following the school of law of Ahmad, and other schools, have different opinions.

When the sovereign succeeds in capturing a number of highwaymen who have plundered some property, he should return it to its original owner (or owners). He should also inflict on the plunderers the penalty (imposed by Allāh). The thieves should also be treated in the same way. But if they (the highwaymen) refused to refund the property plundered, after they have been proved guilty, the sovereign should punish them with imprisonment and beating until they either bring it to him or delegate someone to produce it or indicate its hiding-place. Anyone who refuses to perform a duty imposed on him would also be punished in the same way. For instance, Allāh has in His Book (the Qur'ān) allowed the husband to beat his wife if she has deserted him (in favour of another man) and refused him his right. Those (highwaymen) deserve the same punishment but much more so.

The owner of the plundered property has the right to demand its restoration and failing that, to demand the punishment which might force the plunderers to return it. He may, however, ask for the restoration of a part of it only, and he may also let them off the punishment mentioned above. He cannot let them off the legal punishment (cutting off the limbs

alternately). Neither has the sovereign any right to ask the owner of the property to leave any part of it (in the hands of the plunderers).

If that property has been consumed in one way or another, by the highwaymen or thieves, these are held responsible for it and solvent, as is the case with debtors, according to Shâfi'i and Ahmad, may Allāh bless them both. If they were, at the time, in money difficulties, refunding would be postponed until they were (able to pay). It is said that refunding and penalty (cutting off the limbs alternately) cannot be executed at the same time; a view held by Abû Hanîfa, may Allāh have mercy upon him. It is also said that they might make repayments if they were, at the time, able to pay, as maintained by Mâlik, may Allāh have mercy upon him.

The sovereign should not charge the owners of the plundered property any amount in return for the effort to capture the highwaymen — or to seize the thieves — to execute the penalty or to restore the property plundered; neither for himself nor for the soldiers who would be sent to capture the guilty. The capture of the guilty is a phase of *jihād* (war in the cause of Allāh). The soldiers are sent on this commission as they would be on any other retributive expedition called *bikâr* (encircling, encompassing). This expedition is equipped, and its men are paid, from the same funds assigned to all other expeditions. If there were (in the state treasury) no *special* funds to cover the expenses of this expedition, the balance would be transferred from other departments: from the *fay'*, from the *zakât*-alms, etc., since this retributive expedition is also in "the cause of Allāh."

If the passers-by, whose possessions have been plundered, were, for instance, merchants (who ought to pay *zakât*-alms), the sovereign would collect from them the sums due by them, to equip the expedition and to ensure the pay of its men. But if the highwaymen were extremely powerful and the sovereign deemed it fitter to buy them off (not to fight them), he

might pay to a number of their chiefs, various sums of money to enable them to help in the subjugation of the still rebellious chiefs, or to make them lay down their arms — an act which would weaken the others who are still unsubdued — The former chiefs become, in this way, "people whose hearts are won to Islam" and would have, therefore, right to a share in *zakât*-alms. This is the opinion of more than one of the learned men versed in the law, like Ahmad and others. All this is quite explicitly concluded from the Qur'ân, the *Sunna* (life of the Prophet) and from the principles of Islamic law.

The sovereign should not send on this expedition men who are no match for the plunderers, nor anyone who may exact (further) sums from the (already) plundered merchants and travellers. He ought to commission on such missions the strong and the honest of the soldiery, unless this is impossible; then he should send the best soldiers at his disposal. Sometimes a viceroy or a chief of a village encourages the thieves to exact money and then shares the exacted sums with them — after he has satisfied the victims (in certain cases) by restoring a part of the exacted money.

Such a viceroy is worse than the head-man of the thieves. It is much easier to capture the latter than to deal with the former. The former should be counted among the helpers and supporters of the highwaymen; and if they were sentenced to death, he should share their fate, as the (second) Caliph 'Umar Ibn al-Khattâb, may Allâh bless him, has said.

If the highwaymen plundered the possessions, (this viceroy who has given them aid or protection) should suffer cutting off of the hand; if they murdered their victims and plundered their possessions, then he should be put to death and crucified (like the highwaymen themselves). Some learned men, versed in the law, have asserted that he should suffer cutting off of the hand and execution by crucifixion at the same time. Others say that he should be left to choose between mutilation and death. Even though he may not have permitted them to plunder

and kill, yet when he could have captured them, he shared their spoils with them (instead of inflicting on them the penalty imposed by Allâh). In this way he has neglected to restore the plundered goods to the rightful owners and to execute the penalties imposed by Allâh.

And he who gives protection to a highwayman, a thief, a murderer or other criminal on whom penalties should be inflicted, or defends him against the authority whose duty is to execute the penalty, is his partner in the crime; and he is condemned by Allâh and His Messenger. Muslim has related in his *Sahih*, on the authority of Ali Ibn Abî Tâlib, may Allâh bless him, that the Prophet, peace be upon him, has said: "Allâh has cursed anyone who commits a violation of the law and anyone who gives him protection."

If the sovereign were to catch the man who had given protection to the criminal, he should ask that man to bring the criminal before him or to indicate his hiding-place. If the man refused, he should be punished with imprisonment and frequent beating until he should make the criminal appear. The solvent debtor who refuses to settle his debts should be subjected to a punishment, similar to that mentioned above.

And if some people were to appear before the judge or certain goods were to be brought before him; and a man prevented that, that man would be punished. Further, if a man knew the hiding-place of a sum of money rightfully claimed, or the hiding-place of an accused rightfully pursued, he ought to indicate to the judge the place of either, if there was nothing to prevent him from doing so. It is not permissible to keep such information from the judge. That would not be mutual help in righteousness and piety. If, on the contrary, the accused was illegally pursued and the sum of money illegally claimed, then no one should disclose any information to the effect, as that would then be mutual help in sin and aggression. In fact, such cases ought to be defended, because to defend an oppressed person is the duty of every man. It is related in the *Two Sahih*s,

on the authority of Anas Ibn Mâlik, may Allâh bless him, that the Prophet, peace be upon him, has said: Defend your (Muslim) brother, whether oppressor or oppressed. I (Anas Ibn Mâlik) said: O Messenger of Allâh, I (know how to) defend him when he is oppressed; how can I defend him when he is an oppressor? The Prophet answered: (You) keep him from oppressing (others): that is defending him! Muslim has also related a similar (Saying of the Prophet) on the authority of Jâbir.

It is related too, in the **Two Sahîhs**, on the authority of al-Barâ' Ibn 'Azib ⁽¹⁾, may Allâh bless him: "The Messenger of Allâh, peace be upon him, enjoined on us seven (rules) and forbade us seven (actions); he enjoined on us to visit the sick, to attend the funeral of the dead, to wish health to one when he sneezes, to keep one's oath, to help others keep their paths ⁽²⁾, to accept an invitation (to a meal) and to defend the oppressed. And he forbade us wearing gold rings, drinking from silver vessels, using carpets and saddles of beasts' skins, wearing dresses of silk, or with alternate stripe of silk and linen as well as dresses of (Persian) pure silk and brocades."

(And now back to the original theme):

If (that man) knew the hiding-place (of the highwayman or the plundered property) and refused to indicate it, he would be punished with imprisonment and other (punishments) besides, until he discloses the secret he knows, because he refused to perform a duty which no other man than he can perform. Consequently, he should be punished, provided (the judge) is

(1) Al-Barâ' Ibn 'Azib was a Companion of the Prophet and an able commander who led several expeditions in the time of the Prophet and in the time of 'Umar Ibn al-Khattâb. He died early in the Umayyad period.

(2) If a man swore that another man should do something (should accept a favour from him, for instance), the other man is not bound to comply with this wish. But it would be kind of him to agree to the (innocent) request of the swearer, lest the swearer be guilty of breaking his oath.

sure that the man really has knowledge of the affair.

This principle applies, without exception, to all the cases which come under the cognizance of the viceroys, the magistrates and similar officials, when any man refuses to perform a duty, be it an action or a declaration. This is not to be considered as holding one responsible for a duty which another man should perform nor as punishing someone for a crime committed by someone else. So neither the Qur'anic Verse (xxxv 19): "And the burdened soul shall not bear the burden of another" (none shall be responsible for another's action), nor the Saying of the Prophet, peace be upon him: "The wrongdoer does not harm but himself" applies to him. The man to whom the Verse and the Saying apply is the man who is asked to pay a sum due to another man, while he himself is not an agent nor bailee for that other man, nor indebted to him. The Saying also applies to the man who is punished for a crime committed by a relative of his or a neighbour, while he himself is guiltless. This does not mean that he has neglected a duty nor committed a forbidden action. The latter should not be punished; but the former should be punished for refusing to perform a duty, as he either knew the hiding-place of the aggressor whose appearance before the judge is necessary in order to make him restore the goods to the rightful owner, or he knew the place where the money was hidden and to which certain people had a right; and in spite of all that, he insisted on refusing to lend any help or support. Lending help and support (in this matter) is a (personal) duty prescribed on him by the Book, the Sunna and Ijmâ' (general consent of the Muslims). He behaves in this way either because of favouritism and partiality to the aggressor — as loose companions usually behave — or because of enmity and hate of the aggrieved, contrary to the commandment of Allâh: "And let not the hatred (entertained towards you) by some people incite you not to be just (and kind in treating them); be just; there is more piety in that" (v 8).

Sometimes one refrains from performing one's duties towards Allâh and from maintaining justice — contrary to what Allâh has prescribed to him — out of cowardice, feebleness and abandonment of the Religion (or cause) of Allâh, as would do those who turn their backs whenever they are called upon to support (the cause of) Allâh, His Messenger, His Religion and His Book; if they are told: "Go forth in Allâh's way!", they incline heavily to the earth. This kind (of infringement of the limits set by Allâh necessitates punishment, according to general agreement of the learned men (versed in the Law).

And he who does not do this (does not lend help and support to the just sovereign) causes lawful penalties to be suspended and rights to be discarded and (encourages) the strong to devour the weak. He can be compared to a man with whom an oppressor and procrastinator has deposited his money (accumulated from earned) sums and (from repaid) debts, and who refuses to give this money over to the just sovereign so that (the just sovereign) may settle with it the (oppressor's) debts and pay for the maintenance of his household, relatives, slave-servants and animals.

Often a man is under obligation because of someone else: as, for instance, when he has to provide maintenance for a relative of his — if that relative was in bad need — or to pay the blood-fine necessitated by a murderer in his household.

This punishment is intended for the man who becomes aware of the fact that the person taking refuge with him or the money entrusted to him is to be brought before the judge, he then refuses to do so. It is intended for the highwayman, the thief and for their protectors — or for the man who has knowledge of such a matter but does not communicate it (to the just sovereign). But if he refrains from communicating the information or producing (the person taking refuge with him) lest that person be abused or oppressed, then that would be a good action. Very often the two cases (reporting a wrong-doer to a just sovereign and reporting an oppressed to his oppressor)

are barely distinguishable; and the failure sometimes to decide the case supports the idea of partiality. Therefore, an effort should be made to discriminate between truth and falsehood.

The duty of everyone is to distinguish between right and wrong; and this (the failure to distinguish between right and wrong) often happens among the chiefs of the Beduin and of the towns if a man takes refuge with these chiefs or if he is a relative or a friend of one of them. The chiefs consider it as racial zeal to show their strength and their prestige before the low elements of the people. These chiefs help the man who took refuge with them even if he was an oppressor and in the wrong. They will help him against the one who is in the right and is oppressed, and in particular when the oppressed is a rival chief. They consider that the surrender to the enemy, of the man under their protection, is a humiliation and a sign of weakness. This (way of thinking) is pure pagan zeal. Those (chiefs) are, for the most part, responsible for the disorder in the religious as in the worldly affairs. It has been said that such (disorder) was the cause of many of the wars among the Beduins, such as the war of Basûs which broke out (in pre-Islamic Times) between the Tribe of Bakr and the Tribe of Taghlib. It was also the cause which made way for the invasion of the Muslim land by the Mongol Tartars and the subjugation of the (Muslim) kings of Transoxania and Khurâsân.

He who humiliates himself before Allâh makes himself stronger; and he who deals with others justly, and of his own accord, ennobles himself. The noblest of men in the sight of Allâh is he who fears Allâh most (cf. xlix 13). On the contrary, he who tries to make himself strong by committing injustice: by depriving others of their rights and by sinning, humiliates himself and despises himself. Then Allâh has said: "Whoever desires might, then to Allâh belongs the might wholly" (XXXV 10). And in speaking of the hypocrites, Allâh has said: "They say: if we return to Medîna, the mightier will surely drive out the meaner therefrom. And might belongs to

Allâh and His Messenger and the believers, but the hypocrites know not" (LXIII 8). Allâh has also said of the hypocrites: "And of men is he whose speech about the life of this world pleases thee, and he calls Allâh to witness as to what is in his heart, yet he is the most violent of adversaries. And when he holds authority, he makes effort in the land to cause mischief in it and destroy tilth and offspring; and Allâh loves not mischief. And when it is said to him: Be careful of thy duty to Allâh, pride carries him off to sin — so Hell is sufficient for him. And certainly evil is the resting-place" (II 204-206).

(As a principle), it is the duty of everyone with whom any person seeks protection to (give him protection), if he is oppressed and to help him. But oppression is not proved by mere pretention, for very often, a man complains while he is the aggressor. So (it is also the duty of the future protector) to acquire true information about (the seeker for protection) from his opponent and from other people. If he finds the man to be the aggressor, he should persuade him to refrain from aggression and he should try to reconcile him with his opponent or to end their dispute with an equitable judgement, if possible kindly or by force. If both opponents are oppressors and oppressed at the same time, as is usually the case with those who entertain (personal or factional) desires — like the conflicting Tribes of Qays (North Arabs) and Yaman (South Arabs) and like most of the litigants from the people of the desert and of the provincial capitals — or if both are not aggressors, but their dispute is the result of a difference of opinion regarding the interpretation (of a Qur'anic Verse or of a Saying of the Prophet) or of miscalculation in carrying out reform or administering justice, (then they should come to an understanding on these points according to the precepts set forth by Islam). In this same connection, Allâh has said: "And if two parties of the believers quarrel, make peace between them. Then if one of them does wrong to the other, fight that which does wrong, till it return to Allâh's command. Then, if it returns,

make peace between them with justice and act equitably. Surely Allâh loves the equitable. The believers are brethren so make peace between your brethren, and keep your duty to Allâh that mercy may be had on you" (XLIX 9, 10). And Allâh, be He exalted, has said also: "There is no good in most of their secret counsels except (in) him who enjoins charity or goodness or reconciliation between people. And whoever does this, seeking Allâh's pleasure, We shall give him a mighty reward" (IV 114).

Abû Dâwûd has related in his *Sunan*: "The Prophet, peace be upon him, was asked: Is it pre-Islamic zeal that a man helps his people in the right? No, said he; pre-Islamic zeal is that a man should help his people when they are in the wrong." He has further said: "The best among you is he who helps his people, unless he commits a sin." He has said too: "The man who helps his people, when they are in the wrong is likened to a camel which had fallen in a pit; to save it from the pit, one drags it up by the tail" ⁽¹⁾. He also said: "If you hear someone boast of himself in the manner of the pre-Islamic pagans, make him bite his father's phallus; and use no euphemism!"

Any honour highly prized outside Islam and the Qur'ân, be it a noble birth, a land of origin, a chosen race, a way of life or a personal merit belongs to pre-Islamic zeal. Once two men: a *Muhâjir* (originating from the city of Mecca) and an *Ansârî* (of the city of Medina) quarrelled. The *Muhâjir* shouted: "O *Muhâjirîn*, to me !" And the *Ansârî* shouted likewise: "O *Ansâr*, to me !" The Prophet, peace be upon him, who overheard the invocations exchanged, grew very angry and said: "An invocation after the manner of the pre-Islamic pagans, and I am still (living) among you !"

(1) The one who helps his people, when they are in the wrong, suffers a lot of trouble (like the camel which falls into the pit). He cannot put an end to that trouble except by some disgrace (like dragging the camel from the pit by the tail).

Penalties on Theft

A thief should suffer the severing of his right hand ⁽¹⁾, as is clearly indicated in the Book, the *Sunna* and the consensus of Muslims. Allâh has said: "And (as for) the man and the woman addicted to theft, cut off their hands as punishment for what they have done, an exemplary punishment from Allâh. And Allâh is Mighty, Wise. But whoever repents after his wrong-doing and reforms, Allâh will turn to him (mercifully). Surely Allâh is Forgiving, Merciful" (V 38-39). When the theft is proved by evidence or admission, punishment should not be postponed (or substituted for) neither by imprisonment nor by a fine, but the thief's hand should be cut off on great occasions (when multitudes of people assemble), since the execution of penalties is a form of worship, like the war in the cause of Allâh. It should be known also that the execution of penalties is a Grace of Allâh towards His creatures. The ruler, therefore, should be severe in executing the penalty, and no pity should restrain him from enforcing the Law of Allâh, so that the Law be discarded. (The ruler, further) should (in executing the penalty) have in view the mercy (benefit) of the community (at large), that is (the punishment of one thief should act) as a restraint on the people to refrain from all acts of abomination. (Executing the penalty should not serve) as a revenge or a show of authority. (The ruler, in this case, is) like the father who wishes to discipline his child. If he gave way before the mother's tender-heartedness and stopped the discipline of the child, the child would be corrupted. The father disciplines (or punishes) the child to correct him, though he prefers not to be forced to discipline him. (The ruler should be also) like the physician who prescribes an unpleasant medicine for a patient; and (the penalty should be) like the amputation of a

(1) The first time he steals. Further thefts have further penalties.

gangrened limb, or like cupping or blood-letting. It is like the case of the man who takes the unpleasant medicine and endures the pain inflicted on him in order to be cured of his sickness.

In this spirit penalties have been imposed (by Allâh) and the ruler should execute them in the same way. If the ruler's intention is to reform his subjects and to forbid them all acts of abomination, in order to offer them what is useful and defend them against what is harmful — thinking only of Allâh and obedience to His orders — then Allâh will save him from vengeance of his subjects and will help him to win their hearts. Even the condemned would accept the penalty from him willingly.

If his intention, on the contrary, was to exalt himself and to establish his rule or to try to exact from them an amount of money, everything would turn against him. 'Umar Ibn 'Abd al-'Aziz, may Allâh bless him, was, before he succeeded to the Caliphate, a viceroy to Walid Ibn 'Abd al-Malik, in the City of the Prophet, Peace be upon him; 'Umar's rule in Medina (the City of the Prophet) (86-93 A.H.) was an equitable one. It is related that al-Hajjâj Ibn Yûsuf ⁽¹⁾ (a viceroy to the same Walid) in Hijâz and Iraq, and whose rule was very severe and despotic, came once from Iraq to Medina (in Hijâz) and happened to ask the Medinese about the authority 'Umar had over them. They answered: "We dared not look him in the face!" Al-Hajjâj ⁽¹⁾ asked again: "And how did you like him?" They replied: "He was dearer to us than our own people." He enquired again: "And how was his punishment?" "Well", they said "somewhat between three and ten stripes". Al-Hajjâj

(1) Al-Hajjâj Ibn Yûsuf was a viceroy of Iraq 75-95 A.H. (695-713 A.D.). He was very severe and a tyrant in some respects but he was a great administrator and an architect of the Arab Empire in the East. All the reforms carried out in Iraq after an age of disorder and discord were planned and effected by him.

exclaimed: "This was his grip on you, and this was your love for him; and that was his way of punishing. This is a grace from Heaven."

When the thief's hand is cut off, it should be cauterized. It is recommended that the cut-off portion be tied to his neck (to be seen by everybody). If the same man commits theft for the second time, his left leg is cut off. As for the third and the fourth times, the Companions (of the Prophet) and the learned men who came after them hold two different opinions:

— His four (limbs) should be cut off (consecutively), as held by Abû Bakr, may Allâh bless him, and by the school of Shâfi'i and the school of Ahmad.

— He is to be imprisoned (the third time), which is the opinion of Alî, may Allâh bless him, and the learned man of Kûfa and of Ahmad himself in the second of his two opinions ⁽¹⁾.

The value of the theft which necessitates the infliction on the thief of the punishment of amputation is a quarter of a **dînâr** or three **dirhams** ⁽²⁾, as held by the majority of the learned men of Hijâz and the people (who depend mostly in these matters on the Sayings of the Prophet) like Mâlik, Shâfi'i and Ahmad. Some others say that the value should be one **dînâr** or ten **dirhams**. As to the latter value there is no diversity of opinion. It is related in the **Two Sahîhs**, on the authority of ('Abdullâh) Ibn 'Umar, may Allâh bless them, that the Prophet, peace be upon him, had cut off the hand of a man who stole a shield of three **dirhams** worth. In another version preserved by Muslim: (the Prophet) had cut off (the hand of) a thief (for a theft of) a shield of three **dirhams** worth.

It is related in the **Two Sahîhs**, on the authority of 'Aisha,

- (1) It happened that Ahmad Ibn Hanbal entertained two different (and rather conflicting) opinions in this respect.
- (2) **dirham** was a silver coin of about one shillings worth. **Dînâr** was a gold coin varying in value (according to its weight in the different districts and centuries) between twelve and twenty dirhams.

may Allâh bless her, that the Prophet, peace be upon him, said: "The thief's hand is cut off in (stealing a commodity valued at) a quarter of a **dînâr** or more". Another version by Muslim says: "The thief's hand is not cut off except when (the value of the theft) is a quarter of a **dînâr** or more." In still another version related by Bukhârî: "Cut off (the thief's hand as a result of a theft valued) at a quarter of a **dînâr**, and never below that." A quarter of a **dînâr** was at that time three **dirhams**, and the **dînâr** was twelve **dirhams**.

A man is not a thief (in this particular sense) until he takes the property from an enclosure. But lost money, the fruits on the trees in an open field without a fence and sheep untended by a shepherd necessitate no cutting off of the taker's hand. The taker, however, is beaten hard and is forced to refund a value double of the stolen property, as is clear from the Saying (of the Prophet).

The doubling of the refund is a matter of dispute among the learned men in the Law; Ahmad and some other (jurists), at any rate, support it. As for (stealing the fruits from a tree), Râfi' Ibn Khudaij has said: "I have heard the Messenger of Allâh, peace be upon him, say: 'No cutting off (of the hand of a thief who steals) fruits or palm-tree shoots ⁽¹⁾'" (related by the compilers of the **Sunan**).

It is related from 'Amr Ibn Shu'aib ⁽²⁾, through his father, on the authority of his grandfather, may Allâh bless him, that a man from the Tribe of Muzaina asked the Messenger of Allâh, peace be upon him, and said: "O Messenger of Allâh, I have come to you to ask about a camel going astray (what to do with it)". (The Prophet) said: "(If) it has its saddle and

- (1) Arabis: **Jummâr** (the heart or pith of the new palm-trees shooting from the foot of an old palm-tree).
- (2) 'Amr Ibn Shu'aib was of the third generation after the Prophet (called in Arabic the generation of **tâbi' at-tâbi'in** — following on the generation which followed on that of the Prophet). He was a transmitter of Hadîth.

a water-skin ⁽¹⁾ (on it), then leave it — it will eat from (the foliage of) the trees and drink (the water available) until the man looking for it, finds it". The man asked: "And the sheep going astray?" The Prophet answered: "(That would be) to you, to your brother (to any other man) or to the wolf; you gather them together until the man after them happens to come (to you)". The man asked again: "And (what about) the sheep stolen from its (customary) pasture-ground?" The Prophet replied: "That necessitates a double refund and a hard beating. If it was taken from the enclosure, the hand of the taker is then cut off, if the price of it amounted to that of the shield (i.e. three **dirhams**)". The man asked further: "And (what about) the fruit picked off (the tree)?" The Prophet said again: "He who eats of the fruit by the mouth without hiding any in his clothes deserves no punishment; but he who carries with him (any fruit) pays twice its price and suffers hard beating. If the fruits were stolen from the barns, then the thief's hand should be cut off, provided the value of the stolen produce amounted to that of a shield; if not, he would be made to pay twice as much as the value of the stolen goods and be given several stripes" (related by the compilers of the **Sunan**). (Thus has the Nasâ'i worded the Saying). In this respect, the Prophet, peace be upon him, has said: "Neither the despoiler, nor the pilferer, nor the defalcator deserves cutting off the hand." The despoiler (Arabic: **muntahib**) is the man who steals the thing while the people are watching; the pilferer (Arabic: **mukhtalis**) is the man who takes a thing (quietly), but his action is usually noticed before he gets the thing he wants to steal. The fingerer, the one who steals with his fingers, is also called a pickpocket. He cuts open the pockets, the bags and the parcels (carried by their owners) and is punished by cutting off the hand.

(1) If its (the she-camel's) saddle and a water-skin were on it, it would have gone astray only a short time before. Its owner would be searching for it.

CHAPTER FIVE

Penalties Concerning Adultery

If the adulterer was **muhsan** ⁽¹⁾ (lawfully married), he should be stoned to death, in the same way that the Prophet, peace be upon him, stoned Mâ'iz Ibn Mâlik al-Aslami, the woman of the Tribe of Ghâmid, the two Jews, as well as many others; and as the Muslim (rulers) have done later. But the jurists are not agreed as to whether he should be flogged one hundred times before being stoned. Some jurists, like Ahmad and others, maintain two different views. If he, on the other hand, was celibate, he should be given one hundred stripes, according to the Book of Allâh, and banished the land for a whole year. Certain jurists, however, do not maintain that banishment is necessary.

The penalty is never inflicted on the accused unless four witness have given evidence against him or unless he himself has testified four times that he has been guilty. This is the opinion held by a big number of jurists or by a majority of them. Some of them, at any rate, assert that a testification only once is enough. Furthermore, if a man has admitted (that he was guilty of adultery) and then he recanted, the penalty, in the opinion of some jurists, would be averted. In the opinion of some others, it would not.

The Arabic term **muhsan** applies to a free man who is legally of age, and therefore responsible for his actions, who has had sexual intercourse — though one time only, and in the normal way, with the woman whom he has lawfully married. Whether the woman must also be of age and responsible (to render his conviction valid) is a matter on which the jurists have different opinions. And whether the wife, being still under age, would render the husband **muhsan** or not, is a further point of dispute.

The dhimmis (the Jews and Christians living in the Islamic State) also come within the scope of the term **muhsan**, in the

(1) Muhsan, has an emphatic **h** and an emphatic **s** (as in **sun**).

opinion of most jurists like Shâfi'î and Ahmad, because the Prophet, peace be upon him, ordered the stoning of two Jews at the door of his mosque. That was the first stoning in Islam.

The jurists have different opinions as regards the woman who becomes pregnant, though she has neither a husband nor is she the bond-maid of a known master, nor did she pretend to be pregnant (of a marriage which turned out to be false and consequently annulled). Ahmad, as well as others, holds two opinions about this. It is said that she deserves no punishment, because she might have become pregnant under compulsion or accidentally ⁽¹⁾ or (of a marriage proved later to be false) ⁽²⁾. It is also said that penalty should be inflicted upon her, a view originating from the (time and from the cases in the days of the) four Caliphs (successors of the Prophet). This conforms well with the principles of Islamic Law and is, at the same time, the view expressed by the Medinese school of law. Further, rare circumstances should not be taken into consideration. It is more probable, too, that the pregnant woman and the witnesses she might furnish may all tell lies.

As for sodomy, certain learned men in the law prescribe the same penalty as that for adultery; certain others think that it should be less. The right view to which all the Companions (of the Prophet) agree is that the couple: the upper and the lower (the active and the passive) should be put to death, whether the term **muhsan** applies to them or not. The compilers of the **Sunan** have related, on the authority of 'Abdullâh Ibn 'Abbâs, may Allâh bless him, that the Prophet, peace be upon him, has said: "When you find a couple practising the

(1) Accidentally: from the bath, for instance, cases of which have been known to happen.

(2) Of a marriage proved later to be false: proved later that the couple were close relatives; or as a result of sexual intercourse in doubtful circumstances (a woman imagining that a certain man was her husband), etc...

act of the people of Lot, put both to death: the doer and the done to (the active and the passive)".

Abû Dâwûd has related from 'Abdullâh Ibn 'Abbâs, may Allâh bless them, that the **bikr** (young man, a celibate) found practising sodomy should be put to death. The same view is related from 'Ali Ibn Abî Tâlib, may Allâh bless him.

The Companions of the Prophet did not vary in opinion as to putting the sodomite to death, but they did differ about the form of death he was to suffer. It is related from Abû Bakr **as-Siddiq**, may Allâh bless him, that he should be burned, others said that he should simply be put to death. Some others said that a wall should be caused to fall on him that he might die under the falling stones. Others said that both the active and the passive sodomites should be shut up in the most rotten place until they died. Some said that he (the sodomite) should be lifted to the highest wall in the neighbourhood and then thrown down and stones thrown at him, as Allâh did to the people of Lot. This is one (Saying) related by Ibn 'Abbâs. Another, related also by him, is that the sodomite is to be stoned. This latter view is agreed upon by most of the early jurists from the pure analogy of the stoning of the people of Lot (with stones from Heaven).

Stoning of the adulterer and sodomite is imposed in imitation of the stoning which the people of Lot were subjected to. Thus, the (sodomite) couple should be stoned to death whether they both were free men or slaves, or whether one of them was a free man and the other a slave, provided they were both mature. If one of them was a minor he would suffer a punishment less than death. Then only the nature is stoned to death.

Penalties on Drinking and Defaming

1 — Penalties on Drinking

Penalty on drinking is established by the *sunna* of the Messenger of Allâh and the general consensus of the Muslims. The compilers of the *Sunan* have related that the Prophet, peace be upon him, has said: "If a man drinks wine, flog him; if he drinks again, flog him (again); then if he drinks, flog him (over again). If he drinks for the fourth time, put him to death." It is well established that the Prophet did flog the drinker (of wine) on several occasions, as did his (four) successors and the Muslim (rulers) later.

The majority of the learned men in the Law consider the (Saying of the Prophet concerning the) putting to death (of the drinker of wine) as abrogated; it is said also that it is (decisive, still valid). It may be said too that the penalty consists only of flogging to be executed by the ruler in the degree and manner he deems necessary.

It is well established that the Prophet, peace be upon him, flogged the drinker with a palm-leaf stalk and with shoes, forty times; Abû Bakr flogged (also) forty times; 'Umar has flogged, during his Caliphate, eighty times. 'Ali, may Allâh bless him, used to flog sometimes forty times and sometimes eighty times. Consequently, certain learned men say that the (legal) penalty is eighty times; others say that the imposed (penalty) is forty (stripes), and the extra (stripes) are left to the discretion of the ruler to execute this penalty whenever it is necessary, when the drinker becomes addicted to drinking or when flogging is the only means to make him stop it.

If there are not many drinkers, and with no indulgence, the forty stripes are enough; this being the opinion of ash-Shâfi'i and Ahmad, may Allâh bless them, according to one of the two versions related from Ahmad. When drinking became rather frequent, in the time of 'Umar, 'Umar added (in the penalty) banishment and shaving of the head as a more effective means

of restraint. If the drinker was further punished, in addition to the forty stripes, with a cut in his bread (pension, salary) or by definite dismissal. This penalty will be approved by the jurists. When 'Umar Ibn al-Khattâb, may Allâh bless him, received news that one of his viceroys quoted (at times) some verses (in praise) of wine, he deposed him.

Wine — that which Allâh and His Messengers have prohibited and for which the drinker is to be flogged by order of the Messenger of Allâh, peace be upon him, is every intoxicating beverage no matter of what it is made. It may have been made of fruits like the grape, date and fig, or of cereal like wheat and barley, or formed of dew like honey (cf. *Qâmûs* IV 15) or made of animal produce like milk. When Allâh, be He Glorified and Exalted, revealed to His Prophet, peace be upon him, the prohibition of wine, there was in Medina no wine made of grapes, as there were no grapes ⁽¹⁾ in Medina. Wine was brought to Medina from Syria. The beverage in general use in Medina was brewed from dates. And in spite of that, it is repeatedly related from the Prophet, peace be upon him, from his successors and Companions, may Allâh bless them all, that the Prophet has forbidden every (kind of) intoxicating (beverage) and indicated that it is **wine**.

The Medinese used to take a sweet brew produced by soaking dates and raisins (dried grapes) in water (long enough to make the water sweet), as the water in Hijâz is mostly brackish. This drink is lawful, by the general agreement of the Muslims, as it does not intoxicate; grape-juice is also lawful before it becomes intoxicating.

The Prophet, peace be upon him, had forbidden (the faithful) to brew (the various fruits) in containers of wood or in jars made of clay or in gourds or in vessels tightly sealed with tar. He permitted them to brew in vessels of which the openings are tied with a piece of cloth), because violence

(1) ... sufficient for the industry of wine on commercial basis.

(fermentation) takes place in the soaked fruits so slowly that usually a man is not aware of it. He might perhaps drink it after fermentation had started without his knowing it (so he would be intoxicated and made subject to penalty). But if the vessel is tied with a cloth cover this will be torn by the upheaval of the liquid. (One will then know that the brew is already has fermented and abstain from drinking it) and so there will be no risk of intoxication. The other containers (usually sealed with clay or tar) are not affected by fermentation.

It is related from the Prophet, peace be upon him, that he permitted afterwards that fruits be brewed in all containers. It is supposed that he later said: "Once I forbade you to brew in (certain) containers; now, you may brew in them, but do not take intoxicating beverages." Consequently, the Companions of the Prophet and those who came after them of the learned men differ (as regards brewing in the various containers): those who did not know of the abrogation (of the first Saying of the Prophet by his second Saying) continued to prohibit brewing in the containers (of which the openings are sealed with tar); the others who knew of it and were sure of its authenticity and that it did abrogate (the first Saying) began anew to permit brewing in all containers. A group of jurists who heard that some Companions used to drink the brew (Arabic: *nabidh*) believed that was **wine**, so they authorized the drinking of certain beverages made from (fruits) other than dates and raisins; afterwards they authorized also the boiled brew of dates and raisins, provided that it did not cause intoxication.

The truth agreed to by the Muslims at large is that every intoxicating beverage is wine, and that he who takes it, though one drop — be it as a medicament or otherwise — should be flogged. The Prophet, peace be upon him, was asked about wine taken as a medicine; he said: "It is a sickness and not a medicament: Allâh has not made the cure (of the diseases) of my nation in anything He has forbidden her'.

(Executing) the penalty is a duty (of the ruler), if (conclu-

sive) evidence was brought against (the accused) or if the drinker himself admitted (the accusation). But if he had the smell of wine or had vomited (anything like) wine, he would not be subjected to the legal penalty, according to some (jurists), because he might have drunk something which was not wine or he might have drunk wine unaware or under compulsion. He would be, anyhow, subjected to the penalty, if he knew that what he had drunk was intoxicating. This is the authentic view related from the (four) Orthodox Caliphs (immediately succeeding the Prophet) and from the other Companions of the Prophet, like 'Uthmân, 'Ali and Ibn Mas'ûd; the **Sunna** of the Prophet is also in conformity with this view, and the people also have agreed. It is also the opinion of Mâlik and of Ahmad, in most of the texts attributed to him, and of others too.

Hashish, made of the leaves of Indian hemp, is also forbidden, and the chewer of **hashish** is flogged as is he who drinks wine. In one way, **hashish** is worse than wine because it corrupts the mind and the (physical and moral) constitution (of man) to the extent that he becomes effeminate and a pander (to his own household), as well as subject to other kinds of corruption. In some other way, wine is worse, because it leads to quarrelling and fighting. Both, however, hinder people from following Allâh's way and from performing prayer.

One of the late jurists abstained from inflicting the legal penalty on the eater of **hashish** and held that he may be punished with fewer stripes, assuming that its effect on the mind, in the way of delight, is no more than that produced by anaesthesia. He assumed further, that the early learned men in the Law did not touch this subject. This is not true. The eaters of **hashish** are intoxicated by it and they form the habit of eating it just as the drinkers of wine do; and **hashish** hinders the addict from the remembrance of Allâh and from performing prayer, if he indulges in it, in addition to the other phases of corruption such as panderism, effeminacy, deterioration of the constitution of the body, spoiling of the mind

and other similar effects.

But since **hashish** is solid and eatable, and not a beverage, the jurists are at variance as regards its (religious) uncleanness. The jurists of the school of Ahmad, and others, hold, in this respect, three opinions. Some say that it is as unclean as drinkable wine. This is a valid consideration of the subject. Some others say: it is not unclean, because it is solid. Others still say: a difference should be made between its two states of solid and liquid. At any rate, it belongs to the (beverages) which Allâh and His Messenger have prohibited, as it is the same as wine in its intoxicating effects. Abû Mûsâ al-Ash'arî once said to the Prophet: "O Messenger of Allâh, how do you decide between two beverages we used to manufacture in the Yeman: the **bit'** (hydromel), honey brewed with water until it becomes strong, and **mizr** (zythum), which is maize or barley brewed until it becomes strong". The Messenger of Allâh, peace be upon him who has been given the power of formulating maxims with effective rimes said: "Anything intoxicant is prohibited!" (agreed to its authenticity in the **Two Sahîhs**). And from an-Nu'mân Ibn Bashîr, may Allâh bless him, that the Messenger of Allâh, peace be upon him, has said: "Of wheat wine is made, of barley wine is made, of raisins wine is made, of dates wine is made and of honey wine is made. And I forbid anything intoxicant!" (related by Abû Dâwûd and others). It is also attributed to 'Umar (Ibn al-Khattâb) that, while giving a sermon on the pulpit (in the Mosque) of the Messenger of Allâh, peace be upon him, he said: "Wine is that which causes disorder in the mind." 'Abdullâh Ibn 'Umar, may Allâh bless him, has related that the Prophet, peace be upon him, has said: "Anything intoxicant is wine, and every (kind of) wine is forbidden". Another version runs: "Anything intoxicant is wine, and anything intoxicating is forbidden" (both versions were related by Muslim in his **Sahîh**).

From 'A'isha, may Allâh bless her, is related that the Messenger of Allâh, peace be upon him, has said: "Anything

intoxicant is forbidden; and any beverage of which a **faraq** (peck, two gallons) of it causes intoxication, a handful of it is forbidden (Al-Hâkim considered this as authentic). In the same connection it is related by Jâbir that a man asked the Prophet, peace be upon him, concerning a beverage, drunk in the Land (of Yaman), made of maiz and called **mizr** (zythum). The Prophet asked Jâbir if **mizr** was intoxicating; Jâbir answered that it was. The Prophet said: "Anything intoxicating is forbidden; and Allâh has declared solemnly to anyone who takes an intoxicant (beverage) to serve him (in the hereafter) of the muddy purulence." The audience about the Prophet asked: "And what is the muddy purulence, O Messenger of Allâh?" He answered: "It is the sweat of the people of Hell!" (Muslim has quoted it in his **Sahîh**). Also 'Abdullâh Ibn 'Abbâs, may Allâh bless him, has related from the Prophet, peace be upon him, that anything fermented) is wine, and every intoxicant (beverage) is forbidden.

Sayings (of the Prophet) in this connection are very numerous and very detailed. The Messenger of Allâh, peace be upon him, has summed up, by the virtue of his ability to formulate short maxims, "all that may disturb the mind and cause intoxication" (under the term wine). He has not made any distinction between two kinds of it, nor between the degrees (of intoxication therein); nor did he take any account of whether it is eatable or drinkable. It is known that wine is sometimes used as a sauce; **hashish** is also dissolved in water and drunk. So, wine is drinkable and eatable. Hashish is also eatable and drinkable. And both, in any form, whatsoever, are forbidden. The early (jurists) did not discuss the matter in this particularity, because eating (or rather, chewing) **hashish** is a recent innovation dating from the later years of the sixth century A.H. (XIIth. A.D.). There have been also many intoxicating drinks invented after the time of the Prophet, peace be upon him. All these belong to (the category of intoxicating beverages mentioned) in the brief sentences of the Book and the **Sunna**.

2 — Penalty concerning defamation (accusation of adultery):

Of the penalties mentioned by the Book and the *Sunna* and to which all Muslims agree is the penalty on defamation. If a man accused a **muhsan** of adultery or pederasty (sodomy), he should be punished, (if he could not prove the accusation), with eighty stripes. The **muhsan**, in general, is the chaste free man; in connection with penalty on adultery, a **muhsan** is he who has consummated a legitimate marriage in the normal way.

CHAPTER SEVEN

Forms of Disobedience not Provided for in the Legal Penalties, and the Legal Flogging (Concerning Them).

(Of the) forms of disobedience for which there is no legal penalty or **kaffâra** (expiation in the form of alms) are :

- a) the case of the man who kisses a boy or a woman unrelated to him (by marriage or by a very near kinship);
- b) the (case of the) man who flirts without fornication;
- c) eats a forbidden thing like blood or dead animal (which suffers natural death or is slaughtered in an unlawful manner);
- d) who defames people with an accusation other than adultery;
- e) who steals a thing, not in an enclosure or of a value;
- f) who misappropriates things entrusted to him, as for example (on certain occasions) the exchequers, the trustees of charitable institutions, the guardians of orphans, the agents and the partners do when they defalcate;
- g) who cheats in his dealings (with others) like (the merchants).
- h) who debase the commodities such as foodstuffs and clothes;
- i) who gives short measure (of capacity or weight);
- j) who bears false witness or encourages others to bear false witness;
- k) who accepts bribes to pass favourable judgements or who judges contrary to what Allâh has enjoined;
- l) who exercises aggression on his subjects;
- m) who challenges (others) as was done in the pre-Islamic (and pagan) period or answers the challenge, etc.

All those should suffer correction by flogging (in three degrees): **ta'diban** (to discipline them), **ta'ziran** (to inflict corporal pain on them and make them despised in the eyes of their people)

and **tankīlan** (to beat them without mercy, as to make of them a warning to others), as is deemed fit by the ruler, taking into account how far the form of the disobedience (in question) has spread among the people. If that form of disobedience is widespread, then the ruler should be more severe in punishing those committing it, while not so severe if (that form of disobedience) is less prevalent. The state of the guilty should also be taken into consideration: if he is steeped in vice, his punishment should be increased; if he, on the contrary, commits sins only occasionally (his punishment should be appreciably less). Also the degree of the gravity of the guilt should be taken into account: he who is in the habit of sinning against the women and children of the community, should be far more severely punished than he who has made only one attempt against a woman or a child.

Ta'zīr is not a definite punishment; it is generally an infliction of some pain on a man by word or action or by avoiding saying a good word to him or doing a good deed for him. It may be by harsh admonition or reproach; it may be by forsaking him and neglecting to salute him until he repents, if this is likely to have the desired effect, as has the Prophet, peace be upon him, and his Companions forsaken "the three who were left behind" ⁽¹⁾; it may be by deposing him from office, as the Prophet, peace be upon him, and his Companions used to do; it may be by excluding him from the Muslim army, as the warrior, who flees during the march to the enemy, would be excluded —

(1) The three who were left behind were Ka'b Ibn Mālik, Hilāl Ibn Umayya and Murāra Ibn Rabī'. These men failed to take part in an expedition led by the Prophet to Tabūk (N.W. Arabia), in the year 9 A.H. (630 A.D.) on the pretext that the heat (at that time) was excessive and food and water scarce and the distance too long. The Prophet was angry at them, so he ordered that they should be forsaken and that nobody should even speak with them. (Cf. IX 117-118).

then desertion from the army is one of the grave sins —. To cut off the salary is a kind of **ta'zīr**. If the viceroy, further, committed a scandalous action, his deposition from viceroyship is also a **ta'zīr**.

Ta'zīr also may be by imprisonment, by beating, by daubing the face black or by making the guilty ride, backwards on a donkey. It is related that 'Umar Ibn al-Khattāb, may Allāh bless him, ordered that a man, who had borne false witness should be treated in one of these ways. The liar has blackened the face (of truth), so his face should be blackened; and he has distorted his words, so he should ride backwards in this despised manner.

The maximum **ta'zīr** (by flogging) should not exceed, as is sometimes said, ten stripes. Further, a great many jurists maintain that **ta'zīr** should always be inferior to legal penalty. Some of them say that it should not attain even to the minimum of legal penalties. Thus a free man, who is to be punished by **ta'zīr**, should not receive the forty or eighty stripes which is the regular flogging for a (guilty) free man. Nor should the slave, under the penalty of **ta'zīr**, receive the minimum number of stripes imposed on guilty slaves. Thus, the majority of jurists are in agreement that neither the free man nor the slave should receive the minimum number of stripes imposed on slaves by flogging. Still others say, that (in these correctional punishments) no penalty should attain the minimum of the particular sin, though it may exceed the minimum of another sin. (For instance), the hand of the man who steals a thing, not in an enclosure, should not be cut off, though he might receive more stripes than the man who has accused a **muhsan** of adultery; but he who commits a (sexual) sin less than adultery (flirtation, for example) should not be punished with the penalty imposed on the adulterer, though it may exceed the penalty imposed on the defamer (accuser of a **muhsan** of adultery).

It is related (in this connection) that a man (in the days of 'Umar Ibn al-Khattāb) imitated the seal of 'Umar Ibn al-

Khattâb and appropriated from the state treasury a big sum of money. 'Umar ordered that this man be given a hundred stripes; on the following day the man received anew one hundred stripes; and on the third day he was also given one hundred stripes.

A case was brought up, in the days of the Early Caliphate, of a man and a woman surprised in one bed (what punishment do they deserve? It was decided that they) should be given one hundred stripes (each). The Prophet, peace be upon him, was asked about the case of a man who fornicates with the slave-girl of his wife. (It was decided that if the wife) has allowed them to be alone (Arabic: *akhlat ha lahû*), he should be given one hundred stripes; if she has not, he should be stoned to death ⁽¹⁾. These views are those of Ahmad and others; the first two (in particular) are those of ash-Shâfi'i and others.

Mâlik and certain other (jurists) agreed that some of the crimes, for which no penalty is assigned, may be punished (even) by death. Some of Ahmad's followers have agreed with Mâlik about that, as for example in the case of a Muslim spy who spies on his fellow Muslims at the instigation of the enemy. Ahmad, however, was reluctant to give a positive opinion on the matter; Mâlik and certain followers of the Hanbalite school, like Ibn 'Aqîl, allowed that such a spy should be killed; Abû Hanîfa, ash-Shâfi'i and certain other followers of the Hanbalite school, like the judge Abû Ya'la, forbade that.

Certain followers of the schools of ash-Shâfi'i and Ahmad, as well as of other schools, agreed that the initiator of innovations which are contrary to (the precepts in) the Book and the

(1) If a woman had a maid-slave and she permitted her husband to be alone with that maid-slave and he was, he would be beaten with a hundred stripes. If she did not permit him to be alone with that maid-slave and he was, he would be stoned to death. This is because in either case the husband had committed adultery. The permission of the wife — which is not valid — makes the punishment lighter.

Sunna be put to death. A great many of the followers of Mâlik also agreed with that, and declared that Mâlik himself and some other jurists allowed that the **Qadariyya** ⁽¹⁾ be put to death, for fear that mischief might spread in the land and not because they are renegades. There is the same attitude towards the wizard; the majority of the learned men versed in the Law maintain that he should be put to death. Jundub, may Allâh bless him, related a **mawqûf** and **marfû'** ⁽²⁾ Saying of the Prophet, that penalty imposed on the wizard is a stroke with the sword (related in the Sunan of **Tirmidhi**). A number of the Companions, like 'Umar, 'Uthman, Hafsa ⁽³⁾ (the daughter of 'Umar), 'Abdullâh Ibn 'Umar and others, may Allâh bless them all, hold that he should be put to death, because of disbelief in Allâh ⁽⁴⁾, others say, lest mischief spread throughout the land. The majority of these jurists, at any rate, are of the opinion that putting the wizard to death is an assigned penalty (**hadd**).

Also, Abû Hanîfa is of the opinion that crimes which are not punished, in the first instance, with death, may after repetition be punished with death, provided that a death penalty is

- (1) The Qadariyya are those who believe in free will, in contradistinction to the Jabriyya who believe in predestination.
- (2) A **mawqûf** is a Hadîth (Tradition, Saying of the Prophet) of which the transmitter is a Companion of the Prophet but who has not heard it from the Prophet himself. The chain of transmitters of this Hadîth, between us and the Companion may be with a break somewhere or be without a break. The **marfû'** is any Saying, action or exposition (of a matter) retold of the Prophet, whether — also — the chain of its transmitters is with or without a break.
- (3) Hafsa is a daughter of 'Umar Ibn al-Khattâb and a wife of the Prophet.
- (4) According to Islam Allâh alone has knowledge of the future and the power to influence the course of life of the human beings. When the wizard pretends to have such a knowledge or such a power, he would be denying the truth of certain doctrine of Islam.

relevant thereto, as in the case of the man who commits sodomy repeatedly, or assassinates people in order to appropriate their possessions over and over again.

The putting to death of the mischief-maker, whose mischief cannot be dealt with otherwise, is explicitly concluded (from a Saying of the Prophet) quoted by Muslim in his *Sahih*, on the authority of 'Arfaja al-Ashja'i, ⁽¹⁾ may Allâh bless him, that he said: I have heard the Messenger of Allâh, peace be upon him, say: "If you are united under one ruler, and a man attempts to incite you to mutiny or to destroy your unity, kill him." Another version runs as follows: "You will experience some aspects of evil; see some; who will attempt to destroy the unity of the community, while it is closely bound, strike him with the sword, no matter who he is."

He who drinks wine should also be put to death after the fourth time. This is concluded from (the Saying of the Prophet) related in the *Musnad* of Ahmad, on the Authority of Daylam the Himyarite ⁽²⁾, may Allâh bless him. (Daylam) said: "I asked the messenger of Allâh, peace be upon him: O Messenger of Allâh, we are in a land where we do hard work; so we manufacture from wheat a beverage which gives us some strength to endure the (hard) work and to protect us against the cold of the land. The Prophet asked: Does it intoxicate? I replied: yes! He said: Avoid it. I repeated: But the people are not willing to give it up. He said: If they do not give it up, put them to death." This is because the mischief-maker is like the assaulter (by force of arms); if the evil of the assaulter is unavoidable except by killing him; he ought to be killed.

To sum up, punishment is of two kinds: first, the punishment because of a previous crime 'for which one has earned,

(1) 'Arfaja al-Ashja'i was a Companion of the Prophet and an inhabitant of Kufa.

(2) Dallam al-Himyari was a Companion of the Prophet. He came from Yaman, as the Hadith transmitted by him indicated.

an exemplary punishment from Allâh' (cf. V 38), as for example the penalty imposed on the drinker of wine and the defamer of the innocent man or woman; the second kind being the penalty with the object of making the punished person carry out an enjoined duty or avoid a forbidden action in the future. To this latter kind belongs the punishment of a renegade who is asked to repent (to re-embrace Islam). If he does not, he should be put to death. Similar to that is the case of the person who neglects to perform prayer, to pay *zakât*-alms or refuses to pay to others what is due to them; he should be punished (over and over again) until he starts to carry out (the neglected duty) again.

The *ta'zîr* in the second (category of crimes) should be more severe than that in the first category. Therefore, it is permitted to flog the guilty (of the second category of crimes) frequently until he perform the enjoined prayer (for example) or any other duty imposed on him. The Tradition related in the **Two Sahîhs** from the Prophet, peace be upon him: "Nobody should be given more than ten stripes except in the case of overstepping one of the limits (between the permitted and the forbidden) set up by Allâh" has been explained by a group of learned men in the Law; they said: By the 'limits' of Allah is meant duties and prohibitions with regard to Allâh. The word 'limits' (*hadd*, pl. *hudûd*), in the Book and Sunna mean the dividing lines between the lawful and the unlawful, that is, where the lawful ends and the unlawful begins. In this respect it is said (in the Qur'ân), concerning the first case: "These are the limits of Allâh, so exceed them not" (II 229); and concerning the second case: "These are the limits of Allâh, so go not near them" (II 187).

The application of the word *hadd* (limit) to the punishment of lesser crimes is a recent convention. The Tradition relating from the Prophet (and mentioned above) concerns the punishment, for infraction of duties, by a man himself, as in the case of the husband who beats his wife for having left him in

favour of another man. In punishing her, he should not exceed ten stripes.

Flogging, which is enjoined by the (Islamic) law, is moderate flogging with the whip, not very light nor very heavy. In this respect, Ali, may Allâh bless him, has said "Beating between (the) two (extremities of) beating." Neither light nor heavy; and using a whip between the two extreme types of whips (not very soft nor very hard). Thus the golden mean is preserved. But flogging can never be with a stick nor with a scourge (a whip with a weight at its end). To flog with a **dirra** (bull's pizzle, light lash or whip) is not enough (in the **hudd**, graver crimes), though it is used in **ta'zîr** (punishment in the case of lesser crimes).

Legal penalties, on the other hand, should be executed with the (usual) whip. 'Umar Ibn al-Khattâb, may Allâh bless him, used to punish (the lesser infractions) with the **dirrah**; when it was a case of legal penalty, he asked for a whip.

Not all the clothes (of the condemned) should be stripped (when flogging him), but only those which prevent him from (feeling the pain of the beating, as for example the stuffed (parts of the clothes) and the (garments lined with) furs. Neither should he be tied (to a post), if it is not necessary; nor should the blows fall on his face. The Prophet, peace be upon him, has said: "When you execute the penalty (with beating), avoid the face (of the condemned) and the vital organs should not be struck," the object of the penalty (and the punishment) being to correct (the guilty, in the lesser crimes), not to kill him. Every (other) part should receive its share of the beating, namely, the back, the shoulders and the hips.

CHAPTER EIGHT

Jihâd (Holy War) and Decisive Fight

The penalties decreed in the (Islamic) Law for those who disobey Allâh and His Messenger are of two categories. To the first (category) belong the penalties to be executed on the person or the persons completely subjugated to (the ruler); to the second belong the penalties to be executed on the rebellious group which cannot be subdued except by a decisive fight. Of the latter category is the **jihâd** (Holy war) against the disbelievers who are the enemies of Allâh and His Messenger. Anyone who was summoned by the messenger of Allâh, peace be upon him, to propagate the religion of Allâh, and he did not respond, he should be fought until there be no more civil discord and the only worship be that of Allâh (ii 189, cf. viii 40).

When Allâh sent His Prophet (Muhammad) and ordered him to summon all men to His Religion he did not permit him to kill any man or to fight him on this account, until he had migrated to Medina. Then Allâh did permit him and the Muslims to fight (to defend themselves and to propagate Islam. In this connection) Allâh, be He exalted, has said: "Permission (to fight) is given to those on whom war is made, because they are oppressed. And surely Allâh is able to assist them — those who have been driven from their homes wrongfully, only because they say: 'Our Lord is Allâh'. And if Allâh had not caused some people to be repulsed by others, cloisters and churches and synagogues and mosques in which Allâh's name is remembered would have been pulled down. And surely Allâh will help him who helps Him. Surely Allâh is Strong, Mighty. Those who, if We establish them in the land, will keep up prayer and pay the poor-rate (**zakât**-alms) and enjoin good and forbid evil. And the final issue of all things is unto Allâh" (xxii 39-41).

Afterwards Allâh enjoined fighting on the Muslims in His Saying: "Fighting is enjoined on you, though it is disliked by

you; and it may be that you dislike a thing while it is good for you, and it may be that you love a thing while it is evil for you; and Allâh knows while you know not" (II 216).

Allâh, further, emphasized His order (to fight) and glorified **Jihâd** in the Medinese **Sûras** ⁽¹⁾, as a whole, and rebuked those who neglect it and attributed to them hypocrisy and illness in the heart (bad intentions); He, be He exalted, said (in this respect): "Say: If your fathers and your sons and your brethren and your wives and your kinsfolk and the wealth you have acquired, and trade whose dullness you fear, and dwellings wherein you delight, are dearer to you than Allâh and His Messenger and striving in His way, then wait till Allâh brings His command to pass. And Allâh guides not the transgressing people" (ix 24). Also He said: "The believers are only those who believe in Allâh and His Messenger, then they doubt not, and (those who) struggle hard with their wealth and their lives in the way of Allâh, such are the truthful ones" (xlix 15). And He, be He exalted, said too: "... But when a decisive ⁽²⁾ chapter (of the Qur'ân, **Sûra**) is revealed and fighting is mentioned therein, thou seest those diseased of heart look to thee with the look of one fainting at death. So woe to them. Obedience and a gentle word (would have been the proper behaviour). Then, that the matter (institution of **jihâd** — or Holy War as one means for the spread of Islam) has been decided, it would have been better for them if they had been true to Allâh. Are you not aware — if you did turn your backs to Allâh — that you cause mischief in the land and cut off the ties of kinship among you!" (xlvii 20-22).

(1) Medinese **Sûras** (Chapters of the Qur'ân) revealed in Medina, in the latter part of the Mission of Muhammad. These **Sûras** usually contain legislation and accounts of the battles fought by Muhammad.

(2) Decisive (Arabic: **muhkam**, with emphatic h). Chapter (of the Qur'ân) is a Chapter in which an injunction or a prohibition is stated explicitly.

Reference (to **jihâd**) is very frequent in the Qur'ân; and reference to it and to the people who undertake it occurs in **sûrat-us-saff**, where Allâh says: "O you who believe, shall I lead you to a merchandise which will deliver you from a painful chastisement? You should believe in Allâh and His Messenger, and strive hard in Allâh's way with your wealth and your lives. That is better for you, did you but know! He will forgive you your sins and cause you to enter Gardens where the rivers flow, and goodly dwellings in Gardens of perpetuity — that is a mighty achievement. And yet another (blessing) that you love: help from Allâh and a victory near at hand; and bear thou (O Muhammad) these tidings to the faithful." (lxi 10-13).

Allâh, be He exalted, also said: "Do you hold the giving of drink to the pilgrims and the maintenance of the sacred Mosque (at Mecca) to be on the same level with him who believes in Allâh and the Last Day and strives hard in Allâh's way? They are not equal in the sight of Allâh. And Allâh guides not the unrighteous people. Those who believed and fled (their homes), and strove hard with their wealth and their lives, are much higher in rank with Allâh. And these are they who shall be happy: Their Lord gives them good news of mercy and pleasure from Himself, and Gardens wherein lasting blessings will be theirs. Abiding therein for ever. Surely Allâh has a mighty reward with Him" (ix 19-22).

And He, be He exalted, also said: "O you who believe, should any one of you turn back from his Religion, then Allâh will bring a people, whom He loves and who love Him; humble towards believers, mighty against the disbelievers, striving hard in Allâh's way and not fearing the censure of any censurer. This is Allâh's grace — He gives it to whom He pleases. And Allâh is Ample-giving, Knowing" (v 54).

And He, be He exalted, has said too: "... That is because there afflicts them neither thirst nor fatigue nor hunger in Allâh's way, nor tread they a path which enrages the disbelievers, nor cause they any harm to an enemy, but a good word is written

down for them on account of it. Surely Allāh wastes not the reward of the doers of good. Nor spend they anything, small or great, nor do they traverse a valley but it is written down for them, that Allāh may reward them with what is better than that which they have wrought" (ix 120-121).

Allāh has mentioned (in the previous paragraphs) the (multiplied) rewards He accords to the (undertakers of *jihād*, in comparison) with the actual work they accomplish. The places, in the Book and the Sunna, in which a mention of Allāh's command to undertake *jihād* and of its merits are innumerable. It (the *jihād*) is, therefore, the best of all the voluntary (good actions) which man performs; as it is, by the consensus of all the learned men in the Law, better than the voluntary extra portions of the religious duties: better than the grand pilgrimage ⁽¹⁾ and the lesser pilgrimage; it is better than voluntary prayer and voluntary fasting; as indicated by the Book and the Sunna. In this connection the Prophet, peace be upon him, has said: "The head of the whole affair is Islam; its central pillar is prayer and the tip of its hump is *jihād* ⁽²⁾. He said also: "There are in Paradise one hundred grades between every grade and that next to it, is a distance as that between Heaven and Earth; all these grades are dedicated to the undertakers of *jihād*" (agreed to its authenticity by all relators of the Sayings of the Prophet).

(1) Grand pilgrimage is the pilgrimage to Mecca in the assigned time (the last month of the lunar year). This Grand Pilgrimage is a duty of every Muslim capable (as regards health, wealth, intellectual aptitude, etc.) of performing it once in his life at least. The lesser pilgrimage is a visit to Mecca at any other time during which the visitor performs the acts required in the grand pilgrimage. The lesser pilgrimage is not a substitute for the grand pilgrimage.

(2) The author compares "the whole affair" (of life) to a big tent with a central pillar necessary to uphold the tent and to a camel (a comparison borrowed from the nomad life of the pre-Islamic Arabs and very much current in Arabic literature).

The Prophet also said: "He whose feet have become dusty ⁽¹⁾ in Allāh's way (*jihād*), Allāh will never cause him to enter Hell" (related by Bukhārī). He has said too: "To be stationed (at the frontiers against the enemy of Islam) for the duration of a day and night is better than keeping fast during the days of a month and performing prayers during the nights of that month. And he who falls while guarding his outpost, Allāh will continue to write down for him the (rewards of the good) actions which he performed during his life-time and continue to allow him (the same) provisions (for the benefit of his household after him!); and he will be saved from erring at the questioning of the examiners (in the grave)" ⁽²⁾ (related by Muslim).

It is related in the *Sunan* that "To be a lookout in the service of Allāh, is better than a thousand days in another position." The Prophet, peace be upon him, has also said: "There are two eyes which are never allowed to be touched by the fire (of Hell) — an eye used to weep out of fear of Allāh and an eye which was on the watch on behalf of Allāh," (a Tradition called *hasan* by at-Tirmidhi). And in the Musnad of Ahmad we read: "Guarding the frontiers one night on behalf of Allāh is better than a thousand nights and days spent in prayer and fasting."

We read in the *Two Sahihs* that a man asked the Messenger of Allāh and said: "O Messenger of Allāh, tell me of an action which is equal to *jihād*." The Prophet answered: "Can you — while the undertaker of *jihād* is on the campaign — fast without a break and pray without a respite?" The man said: "Surely not". The Prophet returned "That only is equal

(1) To have dusty feet: to make little effort.

(2) When the dead is laid in his grave, two angels appear to him and set at questioning him about the details of the doctrines of Islam and about his own actions during his lifetime. As a result of this inquisition he is assigned to Paradise or to Hell, and the graves becomes immediately a part of Paradise or a part of Hell.

to **jihād** ! We read in the **Sunan** too, that the Prophet said: "Every nation has its form of devotion to Allāh; and the devotion to Allāh of my nation is **jihād** in the way of Allāh."

Here we have a subject of very wide implications. Nothing else has been so praised (in religious literature) or has had such rich rewards assigned to it as **jihād**. **Jihād** thus is of great advantage to the participant (in **jihād**) and to his community, both in this world and in the hereafter. Further, it includes all the forms of worship: it comprises the love of Allāh, be He exalted, and loyalty towards Him, as well as absolute trust in Him and material and spiritual surrender to Him. (It also represents) patience, self-denial (Arabic: **zuhd**, asceticism) remembrance of Allāh and all the other (good) qualities. No other action is comparable to **jihād** in this respect. The participant in **jihād**, whether alone or in a group has two of the highest privileges. Help (from Allāh) towards victory or martyrdom and entrance to Paradise.

Furthermore, all men experience life and inevitably meet death. It is in **jihād** that they make the best use of their living and dying. Through it they attain the greatest happiness in this world and in the hereafter or else they renounce happiness and (worse still) exchange it for misery. Some people devote all their efforts to a worldly or a religious end though the results may be negligible. This being so, they would do better to participate in **jihād**. Some other people long to sacrifice themselves until they meet death. The martyr's death, therefore, is the easiest of all forms of death and the best of them all.

Since **jihād** is lawful warfare and Religion acknowledges Allāh, and the word of Allāh prevails over all so he who refuses **jihād**, should be fought, as is agreed upon by all Muslims.

But those who do not constitute a defensive or offensive power, like the women, the children, the monks, old people, the blind and the permanently disabled should not be fought, as is agreed upon by the majority of Muslims, unless they carry on a kind of fighting with words (conducting anti-propaganda) or with

certain actions (spying, transport of ammunition, etc.). Some (jurists) maintain that all should be fought (and put to death) because they are infidels, except the women and the children as they constitute a part of the booty. The former view, however, is the true one, since we should only fight those who fight us, if we really want the Religion of Allāh to be victorious (and spread). Allāh, be He exalted, has said in this respect: "And fight in the way of Allāh against those who fight against you but be not aggressive. Surely Allāh loves not the aggressors" (II 190). It is related in the **Sunan** that during one of his campaigns the Prophet happened to pass by a woman who had been killed. He said to the people who were standing looking at her: "This woman could not have been a fighter"; (then) he said to one of those (who were) around him: "Make haste to Khâlid ⁽¹⁾ and say to him: 'kill neither a **dhuriyya** (a woman or a child) nor a **asif** (a hireling)'". It is related in the **Sunan** too, that the Prophet used to say ⁽²⁾: "Kill neither an old man, nor a little child, nor a woman." Allāh permitted the putting to death of those whose (death) would improve the internal situation of the people. As Allāh said: "civil strife is worse than bloodshed" (II 214, cf. II 216, 191). Though killing is (very) evil and wicked, the civil discord (caused by the intrigues) of the infidels is more evil and wicked.

At any rate, the (infidel) who does not prevent the Muslims from establishing the Religion of Allāh, is the one who suffers the disadvantages of his infidelity. With regard to this, the jurists have decided that the preacher of heresy contrary to the teachings of the Book and the Sunna, should be punished more severely than the infidel who takes no action. A Saying of the Prophet reads: "If the guilt was kept secret, it would be injurious only to its author; but when it is made public — and no one combats it — then it would be injurious to the community at large."

(1) Khâlid Ibn al-Walid who was then at the head of an expedition.

(2) (Every time he sent an expedition for **jihād**).

Consequently, the (Islamic) Law prescribes the fighting of the infidels (in general), but does not prescribe the fighting (killing) of those of them who may be captured (in one way or another). On the contrary, if one of the infidels is taken captive, in a state of war or otherwise, for example if thrown on our shores from a wrecked ship, or if he loses his way or if he is taken in ambush, the ruler can treat him as he deems fit: he may kill him, enslave him ⁽¹⁾, he may set him free or he may demand a ransom in kind (money) or (he may set him free) in exchange for a (Muslim) captive (in a land of the infidels). This is the opinion of the majority of the jurists, as they have concluded from the Book and the Sunna; though some jurists consider the liberation of such a captive as well as the ransom in return for his liberty as abrogated.

The People of the Book ⁽²⁾ and the Magi (Magians) should be fought (only on the violation of the terms of the treaties concluded with them, not only because they are non-Muslims) until they embrace Islam or until they pay the tribute at the time they are captured (cf. IX 29).

The jurists are at variance as regards levying tribute from the followers of other religions (other than the People of the Book and the Magians). The majority of them, however, are agreed that no tribute (Arabic: *jizya*, poll-tax) ⁽³⁾ may be levied

(1) The text reads: (*istib'ādihi*: banishing him); the correct reading should be: (*isti'bādihi*: enslaving him).

(2) Peoples of the Book: Peoples to whose prophets Books have been revealed, that is, Peoples of revealed religions (Jews, Christians, etc). Infidels are Peoples with no revealed Books. Consequently they are termed unbelievers, disbelievers or polytheists, defended by the State, cared for, given access to the state functions (except the Caliphate, justice among the Muslims and leadership of the army). Peoples of the Books are exempted from military service.

(3) Poll-tax (Arabic: *jizya*) a definite sum levied per capita: four dinars (ca. 80 shillings) per year imposed on the rich, two dinars on those of moderate income, one dinar on the poor (these sums may be levied in two or three instalments).

from the Arabs (whether Muslims or not) or from any rebellious Muslim group, though the members of which may neglect the performance of a number of explicit and established duties. It is agreed by all Muslims that such a group should be fought, so that all Religion (in the Muslim Land) should be of Allāh. Abū Bakr, may Allāh bless him, fought (the Muslim tribes) who had abstained from paying *zakāt*-alms (to the central treasury) — though certain Companions were not fully agreed on the war, at first, but later they did agree. On one occasion (when Abū Bakr fought the Muslim tribes, before there was unanimity on this), 'Umar Ibn al Khattāb said to Abū Bakr, may Allāh bless them both: "How do you fight these people?" Abū Bakr replied: "The Messenger of Allāh ordered me to fight these people until they should declare that there is no god besides Allāh, and that Mohammad is the Messenger of Allāh. Once they had said this their blood and their wealth would have been protected from me except if they commit an offence against the Muslim faith. As to their actions, they have to give an account (of them) 'to Allāh (on the Last Day)' ! Abū Bakr further said to 'Umar: "Failure to pay *zakāt*-alms is an offence against the faith. By Allāh, if they should refuse to pay to me one *anâq* (*zakāt*-alms on one sheep) only, and in the same way they did to the Messenger of Allāh, peace be upon him, I would also fight them for that." 'Umar replied: "As soon as I realized that Abū Bakr accepted this view, I knew that fighting was the right way."

It is well established, by different authorities, that the Prophet, peace be upon him, has ordered that the heretics be fought. (We read) in the **Two Sahîhs**, on the authority of Ali Ibn Abî Talib, may Allāh bless him, that he said: I heard the Messenger of Allāh, peace be upon him, say: "There will appear, late in time, a group of people young of age vain of mind, they speak

Monks, women, men crippled with age, children and unemployed are exempted. In return for poll-tax the payer is exempted from military service.

in the manner of the most pious people, but their Faith is only on the surface. These (people) will give up Religion (completely) just as the arrow goes through the game (without any trace of blood on it, because it is so sharp and so swift). Wherever you meet them, kill them; surely on the Last Day there will be a recompense for anyone who kills them".

Another version related by Muslim on the authority of 'Ali, may Allâh bless him, reads: I have heard the Messenger of Allâh, peace be upon him, say: "There will appear among my nation a people who read the Qur'ân (very well); your reading (of the Qur'ân) is nothing compared with their reading, nor is your prayer to be compared with their prayer, nor is your fasting to be compared with their fasting. They read the Qur'ân and think that (its content) supports their views, while in reality it condemns them; their reading of the Qur'ân is on the surface. They will give up Islam just as the arrow goes through the game. If those (of you) who encounter them only knew (what reward) they have been promised by the tongue of their Prophet (if they fought them), they would judge them by their actions (not by their words)."

Abû Sa'id related from the Messenger of Allâh, peace be upon him, as a continuation of the same Saying: "... they will kill the Faithful and spare the pagans. If I could live until their time, I would kill them as the people of 'Ad were killed (until I had exterminated them)". In another version, related by Muslim, we read: "My nation will be divided into two parties and a heretical group will arise between them. The party which has most right will undertake the killing of this heretical group." Thus, most of the members of this group called the Haruriyya ⁽¹⁾, were killed by the Caliph Ali, may Allâh bless him, after the breach between the people of Iraq and the people of Syria took place ⁽²⁾.

(1) Harûriyya are the Khawârij (Cf. supra p. 66).

(2) Between the Caliph 'Ali Ibn Abî Tâlib and Mu'âwiya the viceroy of Syria.

The Prophet, peace be upon him, has indicated herewith that the two parties mentioned are of his nation, and that the followers of 'Ali are more in the right. Yet, he urged (us) to fight only those who abandoned Islam, separated themselves from the community and permitted themselves to attack on the lives and wealth of the other Muslims. Therefore, it has been established from the Book, from the **Sunna** and from the general unanimity of the (Muslim) nation that he who forsakes the Law of Islam should be fought, though he may have (once) pronounced the two formulas of Faith (in Islam) ⁽¹⁾.

The jurists are at variance as regards the rebellions group which neglects a voluntary, but established, piece of worship ⁽²⁾, like the two rak'as ⁽³⁾ of the morning prayer; should it be fought because of this? There are two sides to this question:

As regards the duties and prohibitions, which are both explicit and general (the jurists) are agreed that (he who neglects them) should be fought until he agrees to abide (by these duties and prohibitions): to perform the (five) assigned prayers (per day), to pay the **zakât**-alms, to fast during the month of Ramadân ⁽⁴⁾ and to undertake pilgrimage to the Ka'ba (at Mecca). Furthermore they should avoid all forbidden actions, like marriage with sisters, the eating of impure foods such (as pork, dead or unlawfully slaughtered cattle, etc.) and the attack on the lives and wealth of the Muslims. Any such infringer of the Law should be fought, provided that he had a knowledge of the mission of the Prophet, peace be upon him. This knowledge makes him responsible for obeying the orders, the prohibitions and the permits. If he disobeys these he should then be fought. If, on the other hand, he began

(1) The two formulas (Arabic: shahâdatân): There is no other god than Allâh, and Muhammad is His Messenger.

(2) Some aspects of worship are obligatory such as fasting in the month of Ramadân. Others are voluntary such as fasting on all other days.

(3) Prayers are composed of rak'as or a series of repeated actions.

(4) Ramadân is the ninth month of the lunar year.

to fight the Muslims, fighting him becomes an urgent duty, as we have said in the case of the rebellious and the aggressors, the highwaymen. The heaviest *jihād* (Holy war) should be directed against the infidels and those (Muslims) who refuse to abide by certain precepts (of Islam), like the abstainers from paying *zakāt*-alms and the Khârijites ⁽¹⁾. This might be an initial (offensive) or (defensive) *jihād*. In the former case it is a collective duty (*fard kifâya*). If undertaken by a group of the community, the remaining members of the community would be relieved of it. The merit of undertaking it, however, would belong to him who did undertake it, as Allâh, be He exalted, has said: "The holders back — from among the believers, not disabled by injury — and those who strive hard in Allâh's way with their property and their persons, are not equal. Allâh has made the strivers with their property and their persons to excel the holders back a (high) degree. And to each Allâh has promised good. And Allâh has granted to the strivers above the holders-back a mighty reward" (IV 95).

If, on the contrary, the enemy decided to attack the Muslims, then to repulse that enemy would become a personal duty on all, both those against whom the attack was made and those not directly affected by it. The latter are called upon to lend help to the former, as Allâh, be He exalted, has said: "... And if they seek help from you in the matter of Religion, it is your duty to help them, except against a people between whom and you there is a treaty" (VIII 72). The Prophet, peace be upon him, has also ordered that (every Muslim) should help his Muslim (brother, against the common enemy); though the helper may not be a professional soldier. At any rate, each one should do his best to help with his person (by going into battle on foot or on horseback) and with his wealth, be it much or little. Such was the case of the Muslims, when the enemy besieged Medina, in the

(1) See above (p. 66).

year of the trench ⁽¹⁾. Allâh permitted none to abandon the *jihād* (defence of Medina), though he did permit them not to take part in the pursuit of the enemy after the siege was raised. And although the inhabitants of Medina (being the whole Muslim community at the time) were acknowledged (on that occasion) as both unable and able (to participate in the defence), Allâh scolded those who asked from the Prophet, peace be upon him, permission to retire and leave Medina, (on a false pretext): "Saying: our houses are defenceless; the houses are not defenceless, but people themselves wished to run away." (XXXIII 13).

The former (the defence of Medina) was a war to defend the Religion, the family honour and the lives (of the community): an obligatory fighting (which none may refuse). The latter (pursuit of the enemy after the siege has been raised) was voluntary fighting to increase the prestige of Religion and frighten the enemy, as (was the case later in the expedition of) Tabûk ⁽²⁾ and similar expeditions.

So, this kind of punishment (with a Holy war) is intended for the rebellious (Muslim) groups. The non-rebellious groups of the inhabitants of the Muslim Land should be called upon to abide by the precepts which are the five pillars of Islam and the duties related to them such as returning the trust to their owners and keeping one's word in transactions and the like.

He who neglects to perform his prayers, whether he be male or female, must be first ordered to resume the performance of prayer. If he refuses, he will be punished repeatedly until he repents. All the learned men in the Law are agreed on this. Indeed most of these learned men maintain that he should be put to death if he refuses to perform prayer. As to whether he is, when put to death because of this, an infidel, a renegade or only

(1) Year of the trench, 5 A.H. (627 A.D.), when the pagan tribes and their Jewish allies besieged Medina. Unable to meet the enemy in an open battle, the Muslims dug a trench around Medina.

(2) See *supra* (p. 128, footnote)

a half believer is a matter of difference of opinion among the jurists, like Ahmad and others. Most of the early learned men assert that he is an infidel, provided he admits that prayer is a religious duty (and in spite of that he does not want to perform prayer).

If he declares, on the other hand, that prayer is **not** a religious duty, he is considered an infidel by all.

The guardians (fathers, teachers, etc.) are called upon to order the child to perform his prayers, starting at seven years of age. At the age of ten, he is disciplined by beating, if he is reluctant to do so. The Prophet, peace be upon him, has enjoined (in connection with the children in this matter): "Order them to prayer when they are (already) seven (years old) and beat them on that account when they are ten. And (at ten years of age) cause them to sleep in separate beds."

The same principle (of punishment) applies to the preliminary duties necessary for the validity of prayer. It is necessary towards the perfection (of the performance of prayer) to take good care of the mosques of the Muslims and of their leaders in prayer. The Muslims should be urged, further, to perform their prayers in the same manner as the Prophet, peace be upon him, had done, as he has said: "Pray as you have seen me pray" (related by Bukhârî). On one occasion he led his Companions in prayer, while **he** was standing near the edge of the pulpit (which was a somewhat elevated place); then he said to them: "I did this on purpose, so that you may follow me (in prayer) and know (exactly) my (manner of performing) it."

The leader of the people, in prayer and in worship other than prayer, should be patient with people lest they miss certain (steps in the procedure) which may deprive them from attaining perfection in their religious (behaviour). The leader in prayer, for example, should lead the congregation in a prayer which is complete in every respect; he should not be contented with the minimum (of movements and reading) usually permitted

in praying individually, unless a lawful excuse should necessitate that. The leader of the pilgrims and the leader of the army should behave in the same way. An agent or legal representative and a guardian or trustee should act, in transactions, to the best of his knowledge, in the interest of the man who has entrusted him, while in his own transactions he may be even very tolerant. The matter of Religion is still more important (than the affairs entrusted to someone by his fellowman). The jurists have often expounded on this point.

When the rulers take a really earnest interest in the improvement of the religious behaviour of their subjects, the religious and the worldly affairs of both parties (the rulers and the ruled) will be improved; otherwise chaos would develop in their realms. The underlying principle of such good government is faith in their subjects and absolute trust in Allâh. Loyalty and trust (in Allâh) are the guiding lines of the reforms of all good rulers. Allâh has ordered us to say in our prayer: "Thee do we serve and Thee do we beseech for help" (I 4). It is said that these two words comprise the essentials in the Books revealed from Heaven. It is related that the Prophet, peace be upon him, was once on the battlefield and he said: "O 'Master of the day of Requital, Thee do we serve and Thee do we beseech for help'" (I 3, 4). The heads (of the enemy) began to fall. Trust (in Allâh) is alluded to in many places of Allâh's Book, as "So serve Him and put your trust in Him" (XI 123) and "In Him I trust and to Him I turn" (XI 88). The Prophet used to say, whenever he slaughtered a sacrifice (to be distributed among the poor): "O Allâh, (this is) from You and to You".

The most effective help to the ruler in particular, and to every other man in general, comes from three sources:

First: loyalty towards Allâh and trust in Him, shown with humble supplication and in various other ways.

Secondly: goodness to all men shown by helping them (with personal service) and with money as stipulated by *zakât*-alms.

Thirdly: patience which helps everyone to undergo the pain inflicted by others or caused by misfortunes.

Because of a very close connection between prayer and patience, Allâh has mentioned them side by side in two places (of the Qur'ân), where He, be He exalted, has said: "And seek assistance through patience and prayer" (II 45). He has also said: "And keep up prayer at dawn and end of the day and in the first hours of the night. Surely good deeds take away evil deeds. This is a reminder for the mindful. And be patient, for surely Allâh wastes not the reward for the doers of good" (XI 114, 115). Allâh, be He exalted has, further, said: "So bear patiently what they say, and celebrate the praise of thy Lord before the rising of the sun and before its setting" (XX 130). Also He has said in *Surat Qâf*: "So bear patience with what they say, and celebrate the praise of thy Lord before the rising of the sun and before the setting" (L 39); and further: "And We know indeed that thy breast straitens at what they say; so celebrate the praise of thy Lord, and be of those who make obeisance" (XV 97-98).

Often has Allâh mentioned prayer and *zakât*-alms side by side in the Qur'ân. It is by prayer and *zakât*-alms and patience that the conditions of the ruler and the ruled improve, provided one knows what is meant by these general terms (and behaves accordingly). In prayer are included the remembrance of Allâh, be He exalted, supplications (of help and favours from Him), reading the Qur'ân (with contemplation), loyalty to Him by obedience, trust in Him, goodness to all men materially and morally, i.e. to help the oppressed, to relieve the distressed and to satisfy the need of the needy. It is related in the *Two Sahîhs*, that the Prophet, peace be upon him, has said: "All goodness is charity"; in it is included every good action even the smile and the good word. We read in the *Two Sahîhs*, on the authority of Ali Ibn Hâtim, may Allâh bless him, that the Prophet, peace be upon him, has said: "Everyone of you will be spoken to (on the Day of Judgement) by his Lord, with neither a veil

nor through an interpreter. One will look to his right and see nothing but what he did in this world, then he will look to his left and see nothing but what he did in this world. Then he will look forward to face Hell. He of you who can save himself from Hell with one half of a date, let him do so; if he has not (one half of a date) let him do it with a good word."

It is related in the *Sunan*, that the Prophet, peace be upon him, has said: "Never despise any trifling thing of goodness, not even to meet your (Muslim) brother with a smiling face or to pour (some water) from your bucket (drawn on the spot from the well) into the cup of someone asking for a drink." (We read) in the *Sunan* also, that the Prophet, peace be upon him, has said: "The most weighty thing put in the balance (of some one of you, on the Day of Judgement) is good character." It is related that the Prophet, peace be upon him, said to Umm Salama: "O Umm Salam, good character includes every good thing in this world and in the hereafter."

In patience are included fortitude, restraint from anger, pardon of men, check on (evil) desire and abstention from indulgence (in luxury) and from frowning (at every aspect of life). (Of this attitude towards life) Allâh has said: "And if We make man taste mercy from Us, then withdraw it from him, he is surely despairing, ungrateful. And if We make him taste a favour after distress has afflicted him, he says: The evils are gone away from me. Therefore he is exultant and boastful, but there are those who are patient and doers of good. For them there is forgiveness and great reward." (XI 9-11). (In this connection) Allâh has addressed His Prophet, peace be upon him: "Take to forgiveness and enjoin good and turn away from the ignorant" (VII 199). He, be He exalted, has also said: "And hasten to forgiveness from your Lord; and a Garden, as wide as the heavens and the earth, it is prepared for those who do their duty: those who spend in ease as well as in adversity and those who restrain (their) anger and pardon men. And Allâh loves the doers of good (to others) (III 132-133). Also He,

be He exalted, has said: "And the good and evil are not alike. Repel evil to the best of your ability and be with whom you were at enmity like a close friend. Nobody is granted this favour except those who are patient and who have great good fortune. And if a false imputation from the devil afflict thee, seek refuge in Allâh. Surely He is the Hearing, the Knowing" (XLI 34-36). And He, be He exalted, has said: "And the recompense of evil is a punishment like it; but whoever forgives and makes amends, his reward is with Allâh. Surely He loves not the wrong-doers" (XLII 40).

(Of the same subject) al-Hasan al-Basri ⁽¹⁾, may Allâh have mercy upon him, has said: "When it be the Day of Judgment, a caller from the innermost part of the Throne calls out: "Let him rise who has deserved his reward from Allâh! None rises except who have forgiven (others) and have made amends."

Good intentions towards his subjects and goodness to them do not mean that the ruler should do only what they like and omit what they dislike! Allâh, be He exalted, has said in this respect: "And if the Truth follow their desires, the heavens and the earth and all those who are therein would perish" (XXIII 71). Addressing the Companions (through the Prophet) Allâh, be He exalted, has said: "And know that among you is Allah's Messenger. If he were to obey you in matters against Religion then you would be in real distress" (XLIX 7). Goodness to the subjects is, in fact, to do for them what would help them in (affairs) of Religion and in affairs of this world, even though many of them would dislike that. At any rate (the ruler) ought to be gentle in carrying out (the laws and precepts) which his subjects (usually) dislike. It is related, in the **Two Sahîhs**, that the Prophet, peace be upon him, has said: "Gentleness in

(1) Al-Hasan al-Basri d. 110 A.H. (728 A.D.) was a learned man and an ascetic. With him began the movement of the Mu'tazalites (see *supra*, p. 5).

anything would make it beautiful, and violence in anything would make it ugly." He, peace be upon him, has also said: "Allâh is gentle; He loves gentleness, and He causes us to acquire by gentleness that which we cannot acquire by violence."

'Umar Ibn 'Abdul-'Azîz, may Allâh bless him, used to say: "By Allâh, I would often have liked to give (my subjects) the right (to carry out the orders of the state strictly and straight off), but I feared lest they be frightened away. So I waited until a sweet of life (a worldly favour) is possible (to be granted by the State) and I issued both simultaneously. If they were to be scared by the former, they would be calmed by the latter."

Thus has the Prophet, peace be upon him, treated the people (often): whenever a man came to him asking for something he was in need of, he either satisfied his need (when that was possible) or consoled him with a few kind words. Once a relative of the Prophet asked to be appointed as a collector (of **zakât**-alms) that he might have his share of it. The Prophet said to that (relative of his): "Neither Muhammad nor the relatives of Muhammad may have a share of **zakât**-alms. Allâh has forbidden it (to) them and granted them instead (a stable salary) from the **fai**".

On another occasion Ali, Zaid and Ja'far (cousins of the Prophet disagreed as to who should be the guardian of the daughter of their paternal uncle Hamza) and asked the Prophet to decide the case. The Prophet did not decide the case in favour of any of them, but entrusted the orphaned daughter to the guardianship of her maternal aunt. Then he consoled them all three with a gentle word. He said to Ali: "You are of me, and I am of You" (We are but one); to Ja'far he said: "You resemble me in constitution and in character"; and to Zaid he said: "You are our brother and our master."

The ruler should behave thus in his dividing (of benefits among his subjects) and in his governing (of them). The people always ask their rulers for thing and favours which ought not be given them, such as offices, goods, benefits, grants, inter-

cession and reduction of penalties. (A wise ruler) would content those people with a substitute of these things, if possible, or send them back with a gentle word, unless he was obliged to rebuke them. A denial is usually painful to a solicitant, especially if he is one of those whose we want to win. Allâh, be He exalted, has said in this respect: "And he who ask chide not" (XCIII 10); and has said further: "And give to the next of kin his due and (to) the needy and the wayfarer, and squander not wastefully. Surely the squanderers are the devil's brethren. And the devil is ever ungrateful to his Lord. And if thou turn away from them to seek mercy from thy Lord, which thou hopest for, speak to them a gentle word" (XVII 26-28).

When a man is convicted, he (usually) feels injured. So (if the judge) comforts him with kindly words or actions, this will be a good gesture and (a fine act) on the part of the judge or the ruler. This is similar to when the physician gives to the patient perfumed (or delicious things) which make the repugnant medicaments agreeable. When Allâh ordered Moses (and his brother Aaron) to go to the **Pharaoh**, He addressed them thus: "Then speak to him a gentle word, haply he may mind or fear" (XX 44). Also the Prophet, peace be upon him, has said to Mu'ad Ibn Jabal and Abû Mûsâ al-Ash'ari, may Allâh bless them, when he (decided to) send them to Yaman (as judges): "Let (things) be easy and not difficult, and bring (to the people) good tidings of mercy and scare them not (with rigid orders). Then try to come to an understanding (among yourselves on every issue) and disagree not."

Once, a beduin (who had apparently newly accepted Islam) was seen urinating in the mosque of Medina (which was not, at the time, paved); the Companions rushed to (scold or beat) him. But the Prophet said to them: **la tuzrimûhu**, meaning: do not interrupt his urination. Then he ordered that a bucket full of water be sprinkled on the place. Afterwards, the Prophet, peace be upon him, said (to them): "You are called upon to make things easier, not more difficult": (The two Traditions

are related in the **Two Sahîhs**).

This is the tact which every man needs in the government or treatment of himself, of his household and of those under him. The people are often reluctant to accept what is rightly (imposed on them) unless it is accompanied by what they believe will be for their own material benefit, something which will assist them in this life. Enjoying these periods of material benefit, it is in a way a respect of worship of Allâh and obedience to him, when done in good faith. Do not we realize that food, water and clothing are necessary to (maintain the life of) man? If, therefore, a man has (on an occasion) nothing to eat but a dead body, he is permitted by all jurists, to do so if he is hungry. If (on the contrary) he abstains from doing so and dies because of that, he will be punished (in the hereafter) with hell-fire; because all worship is made possible only by a living body (which should be kept alive even if it means consuming impure or unlawful food). Anything which requires a duty, is to be performed it is therefore, in turn, a duty. So, expenses for the maintenance of a man and his household have priority over (all) other (expenses).

It is related in the **Sunan**, on the authority of Abû Hurairah, may Allâh bless him, that the Prophet, peace be upon him, said (once): "Give alms !" A man said: "O Messenger of Allâh, I have one Dînâr (which I may dispense with)". The Prophet said (to him): "Make of it an alms to (spend it on) yourself." The man said: "I have another one." The Prophet said: "Make of it an alms to your wife." He said: "I have still another." The Prophet said: "Make of it an alms to your children." The man said: "I have another also." The Prophet said: "Make of it an alms to your servant." The man said: "And still I have another too." The Prophet said: "You know better to whom you may give it!"

And in the **Sahîh** of Muslim it is related, on the authority of Abû Hurairah, may Allâh bless him, that the Prophet, peace be upon him, said: "A Dînar you spend in the way of

Allâh, a Dînâr you spend in freeing a slave, a Dînâr you give as alms to the needy, a Dînâr you spend on your household; the Dînâr you spend on your household (secures for you) the greatest recompense (on the Day of Judgement). We read in the *Sahîh* of Muslim too, on the authority of Abû Umâma, may Allâh bless him, that the Prophet, peace be upon him, has said: "O son of Adam. If you give as alms that which you have in excess, it would be better for you; if you kept it, it would be worse for you. You are never blamed (if you give no alms) when you have nothing but what you need. And begin by spending on those of your own household. The upper hand (that which gives) is better than the lower hand (that which receives alms)". This may be an explanation of the Saying of Allâh, be He exalted: "And they ask thee as to what they should spend. Say: That which you may spare" (ii 219).

That which man should spend on himself and on his household is a personal duty, unlike that which he may spend on an expedition or give to the needy. The latter is an impersonal duty (which should be sustained by the community as a whole and not by one person, or by every person); it may also be termed as desirable (but not as obligatory), though it may become a personal duty for a definite man, if those around him have declined (or were not able) to perform it. To give food to the hungry is a duty (of everyman). In this connection it is related in the Tradition (of the Prophet) that: "If (every) beggar was sincere (in asking for charity), he who rebuffs him would never be successful" (related by Ahmad). Ahmad adds: "If his (the beggar's) voice was recognized (as indicating sincerity), giving him food becomes a duty."

Al-Hâkim al-Bustî has quoted in his *Sahîh*, on the authority of Abû Darr, may Allâh bless him, the long Tradition containing many aspects of knowledge and wisdom. This Tradition was preserved by the family of David, peace be upon him; and it runs as follows: "A wise man should have (aspects of behaviour designed for) four hours: an hour during which he

invokes his Lord, an hour during which he examines his own conscience, an hour during which he retires with his (good) companions who tell him of his faults and converse with him on the affairs of the inner self. Lastly, an hour during which he is alone by himself to enjoy certain of his pleasures which are lawful and worthy (of him). The (pleasures of the) last hour will help (him) to endure (the performance of the duties of) the former hours.

It is apparent (from the foregoing Tradition) that a man must have certain innocent and worthy enjoyments, because they may help him to undergo those (hard) duties.

The jurists maintain, therefore, that righteousness is godliness in Religion and manliness (in conduct): to behave only in the ways which are lawful and worthy and to avoid all that may defile and disgrace. Abû ad-Dardâ' used to say: "I often resort to some light recreation which may help me perform the (heavy) duty." Furthermore, Allâh originally created pleasures and emotions in the interest of his creatures. It is because of this that they try to obtain what is useful for them. Similarly, He created wrath that they might avoid what would harm them. Allâh has forbidden only pleasures which are harmful and has condemned only those who enjoy them. But he who resorts (at times) to certain innocent and worthy (pleasures) in order to be able to endure the (performance of the imposed) duties, he would be doing a good work. In an authentic Tradition, the Prophet, peace be upon him, has said: "In the marriage of some of you is charity !" Some (of the audience) said: "O Messenger of Allâh, if one of us satisfied a desire in himself would he be rewarded for it ?" The Prophet returned: "What would you say of anyone who did that illicitly, would he be punished for it ?" "Certainly !", they replied. "Well", said he, "why should you hold him responsible for the illicit action and deny him the right to a reward for the lawful one ?"

It is also quoted in the *Two Sahîhs*, on the authority of Sa'd Ibn Abî Waqqâs, may Allâh bless him, that the Prophet,

peace be upon him, has said: "Anything you spend with the intention of pleasing Allâh will secure you (in the eyes of Allâh) a higher degree and more prestige, even the morsel you put in the mouth of your wife." Traditions bearing on this subject are very numerous. So, when the faithful has a good intention, his good intention affects all his actions and all permitted pleasures will be, then, counted as good actions of his because of his sincerity of heart and his good intentions. The hypocrite, on the contrary, on account of his dishonesty of heart and bad intentions, is punished for the worship which he performs only to be seen of men. An authentic Tradition is related from the Prophet: "Lo, there is in the body a piece of flesh; when it is sound, the whole body is, then, sound; and when it gets corrupted, the whole body will be corrupted. Lo, it is the heart !"

And as penalties have been instituted to encourage people to accomplish the duties (imposed on them) and to avoid forbidden actions, so (Allâh) has also instituted all that may help in this direction. The ways and means of doing good and of the obedience (of Allâh) should be made easy with (moral) help and (material) stimulants in every possible way: grants should be made by (the father) to his children and (the remaining members of his) household as well as (by the ruler) to his subjects, so as to encourage them to perform good actions. These grants may be in the form of cash or praise or anything of the kind. So, racing of horses and of camels and competition in shooting with prizes have been instituted, because such institutions encourage people to develop their strength and to rear horses (which would eventually be of use) for *jihâd* (holy war) in the way of Allâh. The Prophet himself, peace be upon him, as well as his Orthodox Caliphs (the four Caliphs who succeeded him) used to hold horse-races and furnish the necessary expenses from the state treasury. Also the pay to those whose hearts are expected to be won to Islam (would lead to favourable results). It has been related that people often embraced Islam in the

morning, for love of worldly gain; but by the end of the day Islam became dearer to them than anything under the sun.

In like manner, evil and sin should be eradicated and all ways to them obstructed. Likewise, all (permitted behaviour) suspected of leading to sin should be done away with, unless it (represents) a general positive interest (for the community). As an example (and as a hint only) the Prophet, peace be upon him, has said: "A man should not be alone with a woman, otherwise the devil will be third with them." He has also said: "No woman who believes in Allâh and in the Last Day should undertake a two days journey except in the company of her husband or of a man of very near kinship ⁽¹⁾". The Prophet, peace be upon him, has thus forbidden (a man) to be alone with a woman not related closely to him, or to journey with her, as that would be a means of temptation. It has been related, on the authority of Ash-Sa'bî, that a delegation of the Tribe of 'Abd Qais came to the Prophet, peace be upon him. In the delegation there was a very handsome young man. The Prophet ordered the young man to take a place behind him. Then he said: "The sin of David was (his) good looks".

One night 'Umar Ibn al-Khattâb, may Allâh bless him, was patrolling in Medina; he overheard a woman reciting some verses of which one was:

Would I have some wine to drink,
Or could I get to Nasr Ibn Hajjâj !

'Umar sent for Nasr; he found that he was a very handsome man. He ordered that Nasr's head be shaved, but the man became more handsome. 'Umar banished him to Basra (in Southern Iraq) lest the women be seduced by him.

It has been told of ('Umar) too that he heard of a man who used to invite some lads to his house (or of a man whose

(1) Very near kinship (Arabic: mahram) is said of relatives who are so near to one another that marriage between them is unlawful.

company some lads used to seek). 'Umar forbade him to do this any longer. So, if it is feared that a lad will be of some temptation to men or women, his tutor or guardian should not let him appear in public unless it is absolutely necessary. He should not adorn him (with fine dress) nor especially let him use much perfume or appear naked in the public salons where there is entertainment and singing. If (the custodian of the handsome lad does any of these forbidden things) he ought to be beaten.

Also if a man becomes notorious for debauchery, he should not be allowed to have beardless and handsome slave-servants; and (if he happens to have some such slaves) a separation between them should be effected. The jurists are unanimously agreed on the fact that if a man appears before the judge to bear witness — while he is notorious for an aspect of immorality which renders his witness invalid — his witness should not be accepted. Moreover, the litigant (against whom this man is bearing witness) may refute the witness, though he might not have seen the man (in any degrading situation). A funeral once passed by the Prophet, peace be upon him. As (the Companions of the Prophet) praised the dead, (the Prophet) said: "It is well deserved." At another time, another funeral passed by him. As (his Companions) censured the dead, he said: "It is well deserved." They asked for an explanation (of one sentence uttered in two different situations). The Prophet said: "You praised the dead in the former funeral, I said: Paradise is deserved. And you censured the dead in the second funeral, I said: Hell-fire is deserved. You are the witnesses of Allâh on Earth."

(Hearsay, however, is not always enough; but evidence is needed). There was (at the time of the Prophet) a woman who was known to be given to debauchery. The Prophet used to say: "If I were to stone anyone without evidence, I would stone this (woman)."

Penalties are not executed except after evidence (has been brought to support the accusation). To feel doubtful about a

man, as regards his witness, his honesty and the like, does not need inspection; widespread hearsay is enough; even hearsay which is not widespread may suffice. We may, however, judge a man by his associates; Ibn Mas'ûd has said: "Form your opinion of people by (procuring knowledge of) their intimate friends." Such caution is necessary to avert evil by someone or to guard against (a surprise from) an enemy. 'Umar Ibn al-Khattâb, may Allâh bless him, has said (in the same spirit): "Guard yourselves against (mischievous) people by distrusting (them all)". This has 'Umar enjoined, although it is not permissible that a Muslim be punished because of a (personal) mistrust (in him).

PART II

Penalties and Rights Belonging to a Certain Human Being (Private Law)

CHAPTER ONE

The Souls (Retaliation)

Of the penalties and the rights belonging to individual human beings (we discuss here) the **nufûs** (souls or the law of retaliation). Allâh has said in this respect: "Say (O Muhammad, to the Muslims): Come ! I will recite what your Lord has forbidden to you: Associate naught with Him and do good to parents and slay not your children for (fear of) poverty — We provide for you and for them — and draw not nigh to indecencies, open or secret, and kill not the soul which Allâh has made sacred, except in the course of justice. This He enjoined upon you that you may understand. And approach not the property of the orphan except in the best manner, until he attains his maturity. And give full measure and weight with equity — We impose not on any soul a duty except to the extent of its ability. And when you speak, be just, though it be (against) a relative. And fulfil Allâh's covenant. This He enjoins on you that you may be mindful. And (know) that this is My path, the right one, so follow it, and follow no (other) ways, for they will lead you away from His way. This He enjoins on you that you may keep your duty" (VI 152-154).

Allâh, be He exalted, has also said: "And a believer would not kill a believer except by mistake. And he who kills a believer by mistake should free a believing slave, and blood-money should be paid to his people unless they remit it as alms... And whoever kills a believer intentionally, his punishment is hell, abiding therein; and Allâh is wroth with him and He has cursed him and prepared for him a grievous chastisement" (IV 92-93). And He, be He exalted, has said too: "For

this reason We prescribed for the Children of Israel that whoever kills a person, unless it be for manslaughter or for mischief in the land, it is as though he had killed all men. And whoever saves a life, it is as though he had saved the lives of all men. And certainly Our messengers came to them with Our arguments..." (V 32). Further, we read in the **Two Sahîhs** that the Prophet, peace be upon him, has said: "On the Last Day, Allâh will judge among the people by the blood (which they have shed in this world)".

There are three kinds of killing:

First: purely premeditated (killing) which constitutes an attack on a man who is *ma'sûm* (not deserving to be killed) with an instrument which is usually fatal and which kills by cutting, as for example a sword, or by its weight, an anvil or a bleach-er's *quḍin* ⁽¹⁾ or in any other way such as burning, drowning, throwing from a high place, strangling, crushing the testicles until death supervenes, suffocating until the victim expires, poisoning and the like. Anyone who commits one of these acts should suffer retaliation, that is, be given up to the near relatives of the killed who may kill him, if they choose, or may forgive him or may ask for a ransom. They have no right, however, to kill any other man than the killer. Allâh, be He exalted, has also said: "And kill not the soul, which Allâh has forbidden, except for a just cause. And whoever is slain unjustly, We have indeed given to his heir authority — but let him not exceed the limit in slaying. Surely he will be helped" (XVII 33).

The explanation of ("Let him not exceed the limit in slaying") is that he should kill only the killer.

It has been related, on the authority of Abî Shuraih al-Khuzâ'i ⁽²⁾, may Allâh bless him, that the Prophet, peace be

(1) perhaps, a piece of wood, with a flat and broad end, with which soaked clothes are beaten to make them clean.

(2) Abû Shuraih al-Khuzâ'i, d. 68 A.H. (687-688) was a Companion of the Prophet.

upon him, has said: "He of whom a near relative has been (unjustly) killed or (who was) wounded has one of three choices — if he insists on a fourth (choice), then restrain him: to kill (the killer), or forgive (the killer) or to take a ransom. He who makes one of these (choices), then makes a further revenge, for him is the fire of hell to abide in it for ever (related by the compilers of **Sunan**, and accepted by the Tirmidhî to be authentic). So, he who kills (the killer) after he has forgiven him or takes from him a ransom, is more criminal than the man who first killed. Some jurists have maintained in this respect that penalty should be executed upon the killer (by the state) and his case cannot be referred to the near relative of the victim. Allâh, be He exalted, has said, (in this connection): "O you who believe, retaliation is prescribed for you in the matter of the slain: the free for the free, and the slave for the slave, and the female for the female. But if a remission was made to one by his (aggrieved) brother, prosecution (for blood-money) should be according to usage, and payment to him in a good manner. This is an alleviation from your Lord and a mercy. Whoever exceeds the limit after this, will have a painful chastisement. And there is life for you in retaliation ⁽¹⁾, that you many guard yourselves" (II 178-179).

The learned men in the Law have said: "The relatives of the murdered person are so enraged that they would like to kill the murderer and all his near relatives. In fact, often they are not satisfied with retaliation against the killer himself, but they kill, in addition, many of his people: the chieftain of the tribe, the head of the community and others. In this case, the murderer has started aggression and stirred up those who want retaliation and who behave as the people of pre-Islamic (paganism) used to behave, and as do the groups of Beduins and

(1) The law of retaliation would act as a restraint and crimes would become less in number and in gravity.

townfolk who do not abide (in this instance) by the Law of Islam".

Sometimes the near relatives of the murdered deem it wicked to retaliate against the murderer if he is of a nobler class than the murdered, so they attack and kill as many of the near relatives of the murderer as they can ⁽¹⁾. Then, perhaps both sides will ally themselves with certain people and seek their help. Consequently, civil discord and bitter enmity ensue. The cause of this strife is that they have all deviated from the ways of justice which the law of retaliation prescribes. Allâh has prescribed to us the law of retaliation based on the equality and parity between the murderers (on one hand) and the murdered (on the other). He also informs us that there is life for us in the law of retaliation. In the first place, it spares the lives of the near relatives of the killer and the killed. Secondly, if the man who designs to kill knows that he will be killed, he will abstain from killing. It has been related from Alî Ibn Abî Tâlib, may Allâh bless him, and from 'Amr Ibn Shu'aib, on the authority of his father through his grandfather, of the Prophet, peace be upon him, that he has said: "The faithful are equal in birth; and they are united in the face of others; and the most humble of them speaks in the name of all. Lo, no Muslim may be killed (in retaliation) for an unbeliever; nor (should anyone be killed or fought) during the term of the treaty with him." In this Tradition, the Prophet, peace be upon him, has enjoined that all Muslims are equal, as regards race and social class: no Arab should be preferred to non-Arab, nor a Qurashî or Hâshimî ⁽²⁾ to any other Muslim, nor a free man of birth to a freed man, nor a learned man or a prince to

(1) Text reads as is stated above: "if he is of a nobler class". More logical, and at the same time conforming more to usage, should be read: "who is of a **humbler** class".

(2) Qurashî (a member of the Tribe of Quraish, the Nobility of Mecca). Hâshimî (a member of the family of Hâshim, the family of the Prophet, which is also of the Tribe of Quraish).

an illiterate or a common man.

All Muslims are agreed on this equality among themselves, contrary to what the people of pre-Islamic paganism and the Jewish judges have held (as regards their people). There were, in the neighbourhood of Medina, two groups of Jews: the tribe of Quraiza and the tribe of Nadîr; the Nadîrs considered themselves as nobler in blood (birth) than the Quraizas. Once they submitted to the Prophet, peace be upon him, their difference of opinion, as regards their nobility of birth and as regards penalties imposed on adultery — then they changed the penalty from stoning to blackening the face (of the adulterers) — and they said (to the Muslim): "If your Prophet decided the case in this manner, that would be a proof in your favour (that Muhammad is a Prophet); otherwise, you would have neglected the decision of Tawrât (Old Testament)" ⁽¹⁾. Allâh, be He exalted, has then revealed (to His Prophet, Muhammad): "O Messenger, let not those grieve thee who hasten to disbelieve, from among those who say with their mouths, We believe, and their hearts believe not... So if they come to thee, judge among them or turn away from them. And if thou turn away from them, they cannot harm thee at all. And if thou judge, judge between them with equity. Surely Allâh loves the equitable... So fear not the people but fear Me, and take not a small price for My Messages. And whoever judges not by what Allâh has revealed, those are the disbelievers. And We prescribed to them (in the Tawrât — Old Testament) that life is for life, and eye for eye, and nose for nose, and ear for ear, and tooth for tooth, and for wounds retaliations..." (V 41-45).

Allâh, be He glorified and exalted, has indicated (in these Verses) that he made all souls (persons) equal and did not prefer anyone to any other, as used to be done. Then He continues: "And We have revealed to thee (O Muhammad) the Book with the truth, verifying what is before the Book and

(1) The use of pronouns in the text is somewhat vague.

a guardian over it, so judge between them by what Allâh has revealed, and follow not the low desires (turning away) from the truth that has come to thee. For every one of you We have appointed a law and a way... Is it then the judgement of ignorance ⁽¹⁾ that they desire? And who is better than Allâh to judge for a people who are sure" (V 48-50).

The decision of Allâh, be He glorified, that all Muslims are equal, is contrary to the concept, in this matter of the people of the pre-Islamic paganism. The causes leading to low desires among the people in the nomadic tracts, just as in the towns go back mostly to aggression and to the neglect of justice. One group, for instance, would kill a member of another group or wrest from it some property or dominate it unjustly and then treat it unfairly. The other group (when in the position to retaliate) would not be satisfied with regaining its rights (by retaliating justly). The principle enjoined in the Book is: Allâh is to judge among the people as regards revenge and properties and the like with the equity which Allâh has indicated, and is to abolish the usages of pre-Islamic paganism by which very many of the people still abide. And when a man tries to reconcile two (conflicting) groups, he should do that with justice, as Allâh, be He exalted, has said: "And if two parties of the believers quarrel, make peace between them. Then if one of them does wrong to the other, fight that which does wrong, until it returns to Allâh's command. Then, if it returns, make peace between them with justice and act equitably. Surely Allâh loves the equitable. Then believers are brethren so make peace between your brethren..." (XLIX 9-10).

The near relatives of the killed ought to be asked forgiveness, as this is better for them (all), as Allâh, be He exalted, has said: "And for wounds, retaliation. But whoever forgoes it, it shall be an expiation for him" (V 45). Anas, may Allâh

(1) Judgement of ignorance: judgement in the manner of those who lived in the Age of Ignorance (before Islam).

bless him, has said: "Any time a case of retaliation has been brought before the Messenger of Allâh, peace be upon him, he ordered (the aggressive party) to ask forgiveness" (from the aggrieved) (related by Abû Dâwûd and others).

Muslim has also related in his *Sahîhs*, on the authority of Abû Huraira, may Allâh bless him, that the Messenger of Allâh, peace be upon him, has said: "Charity has never made any property diminish; nor has Allâh increased a servant of Him who accords forgiveness only for power (and prestige); and any one who humbles himself before Allâh, Allâh will raise him in rank." At any rate, the parity of which we have spoken applies to the free Muslim (killed by) a free Muslim. The dhimmî (the Jew or the Christian living in the Islamic state) is not, as maintained by the majority of learned men in the Law, a peer to a Muslim. Likewise, the *musta'min* — he who comes from the land of the infidels, as an envoy or merchant or the like — is not a peer to a Muslim, as unanimously agreed upon. A few say that he is a peer to a Muslim ⁽¹⁾. There is, similarly, a variance of opinion as to whether a free man may be killed (in retaliation) for a slave.

Secondly: Killing by mistake resembling intention.

The Prophet, peace be upon him, has said: "There is in the killing by mistake resembling intention — being effected by a whip or a stick — (blood-money of a) hundred (she-) camels, forty of which should be pregnant with the foetii in their wombs." The Prophet has called this kind of killing "killing by mistake resembling intention" because (the guilty) intended aggression by beating only, (an aggression) which often does not lead to death. He intended aggression and did not intend to kill.

(1) ... a peer of a Muslim, because the Islamic state should defend him (once it allowed him to stay in the land under its sovereignty and jurisdiction) as it defends the Muslim subject.

Thirdly: killing (purely) by mistake or in similar circumstances, for example if a man were shooting at game or at a target and he hit another man unintentionally. Such cases do not imply the death penalty, but they impose the blood-money and a **kaffâra** ⁽²⁾ or expiation.

There are very many other similar cases known in the books of the learned men and among the learned men themselves.

(2) **Kaffâra** (expiation) is usually, a sum of money given to the poor as a sign of repentance. Expiation, however, does not free the guilty from the imposed penalty (if the guilt was an aspect of worship — for one reason or another — or a violation of one of Allâh's commandments or an aggression inflicted on another man).

CHAPTER TWO

Wounds

Retaliation in the case of wounds is also indicated in the Book, in the **Sunna** and by consensus (of the Muslims), provided there is parity (between the wounder and the wounded): if a man cut off the right hand of another man from the joint, the other man may cut off the hand of the former in like manner; if he dislocated another's tooth, the other may dislocate his tooth; and if he made a wound in another's skull or face going deep to the bone (causing a fracture), the other may retaliate in the same way. But if retaliation in the same manner is impossible, as in the case of an internal fracture or a wound which does not go deep enough to expose the bone, no retaliation is allowed, but a relative fine should be paid. Common beating with the hand or with the whip or with the stick implies, in the opinion of a group of learned men, no retaliation. It necessitates, however, **ta'zîr** (punishment by beating), since it is impossible to retaliate in such cases, in an exact manner.

It is related from the four Orthodox Caliphs and other Companions and from the generation following that retaliation in the forementioned cases (blows that cause no wounds) is quite lawful. Such was the explicit opinion of Ahmad and other jurists; and this is what was related to us in the Tradition of the Messenger of Allâh, peace be upon him. This is the correct (attitude). (As a substantiation the following is mentioned):

Abû Firâs has said: "Umar Ibn al-Khattâb spoke once in public and quoted a Tradition (from the Prophet) in which the Prophet had said: "Lo, by Allâh, I send not my collectors to slap you on the face nor to appropriate (unjustly) of your money, but I send them to you to teach you (the affairs of) your Religion (of Islam) and the ways of (decent) life (*sunanukum*, *Qâmus*, IV 273). He to whom any other thing is done,

let him report it to me. By Whom in Whose hand my soul is, I would allow him to retaliate."

(At this point) 'Amr Ibn al-'As interrupted and said (to 'Umar Ibn al-Khattâb): "O Prince of the Faithful, if one of the Muslims was (ruling) over (a group of) subjects, and he (happened) to punish his own subjects (in this way), would you surely expose him to retaliation?" ('Umar Ibn al-Khattâb) answered: "Yea, by Him in Whose hand Muhammad's soul was, I would expose him to retaliation; why should I not do it! I have seen the Messenger of Allâh, peace be upon him, expose himself to retaliation. Lo, never beat the Muslims lest you humiliate them, nor forbid them their rights lest you cause them to fall back into disbelief" (related by Ahmad and others).

This applies, however, to the case of the ruler who beats his subjects in an unlawful way. But lawful beating entails no retaliation, as per consensus (of all learned men in the Law). On the contrary, it is a duty (of the ruler). It is (maintained by certain jurists that it is) recommended (in certain cases) or (sometimes) permissible.

CHAPTER THREE

Dishonouring Others

Retaliation in connection with dishonouring others is also lawful. If a man curses another man or invokes Allâh to maltreat him in some way, the other man may retaliate (return same for same); similarly, when one abuses some other one by mentioning certain demerits of his. Forgiveness (in all these cases), however, is better. Allâh, be He exalted, has said: "And the recompense of evil is punishment like it; but whoever forgives and amends, his reward is with Allâh. Surely He loves not the wrongdoers. And whoever defends himself after being oppressed, these it is against whom there is no way (of blame)" (XLII 40-41). The Prophet, peace be upon him, has said: "The two who abuse each other — whatever they may say — he who has begun is to blame, unless the oppressed (abused preliminarily) has retaliated in excess": has exceeded (lawful) reparation (satisfaction for wrong).

An insult which does not constitute a lie is one which tells of the shameful behaviour of a man, or one in which such a man is called son of a bitch or an ass or the like. (In this case retaliation in the same terms is permitted). But if a man ascribed to another man demerits which are not known of the other man, the other man is not permitted to retaliate in the same manner. Even if the former has accused the latter — unjustly, however — of disbelief or debauchery, the latter has no right to return the same accusation to the former. And if the former has cursed the father or the tribe of the latter, the latter has no right to curse the father or the tribe of the former, since the father and the tribe of the former were not those who cursed him. In this respect, Allâh, be He exalted, has said: "O you who believe, be upright for Allâh, bearer of witness with justice; and let not hatred of a people incite you not to act equitably. Be just, that is nearer to observance of duty.

And keep your duty to Allâh. Surely Allâh is aware of what you do" (V 8). Allâh has (in this Verse) enjoined the Muslims that their hatred, (even) to the infidels, should not cause them to be unjust, as He has said: "Be just; that is nearer to the observance of duty."

If the dishonouring insult was forbidden because it would inflict some personal injury on the man cursed, a retaliation with similar terms is permitted: if a man invokes Allâh that an evil should befall another man, the other man may invoke Allâh that the same evil befall the first man. But if the dishonouring insult, on the other hand, was forbidden because it violates a commandment of Allâh — such as telling a lie — no retaliation whatever is permitted. Very many of the jurists agree to this. (They say: If a man) has killed another man by burning or by submerging in water or by strangling, the guilty may be treated in the same way. But if the offence was a forbidden act, such as (if a man) has forced another to swallow some wine or has violated him (sexually), no retaliation is allowed. Certain jurists have said that the penalty to be executed on the killer mentioned may only be effected with the sword. The foregoing opinion (retaliation in the same way) conforms better, however, with the Book, the *Sunna* and with justice.

CHAPTER FOUR

Forging Lies

If forging lies and similar guilty acts cannot be retaliated in the same manner, a penalty may be executed on the guilty. Of this category is the penalty imposed by the Book, the *Sunna* and the consensus (of all Muslims) on the one who accuses others of adultery. Allâh, be He exalted, has said: "And those who accuse free women and bring not four witnesses, flog them (with) eighty stripes, never accept their evidence, and these are the transgressors — except those who afterwards repent and act aright; surely Allâh is Forgiving, Merciful" (XXIV 4-5).

If a free man falsely accused a *muhsan* with (any of the two kinds of adultery): fornication or sodomy, he is to suffer the relative penalty which is eighty stripes; if the accusation was other than these, then the accuser would be beaten *ta'ziran* (in the manner and to the extent the judge deems fit). This penalty is a right solely of the accused; it can never be executed (on the accuser) unless the accused demands it, the jurists being agreed unanimously to that. If the accused chose to forgive the accuser, the relative penalty would be dropped, in the opinion of the majority of the learned men in the Law, since the personal right in retaliation and in the theft (of property) has priority. It is also said that the penalty, in this case, would not be dropped, since (the accusation of adultery) involves a sin (violating a commandment of Allâh) and is, at any rate, unlike the other penalties. The penalty connected with accusation of adultery is executed only if the accused was a *muhsan*, i.e., a free chaste Muslim.

But he who is notorious for his debauchery, no penalty (relative to accusation of adultery) is executed on his accuser, nor is it executed on the accuser of an infidel or a slave; though such accuser is (usually) punished with beating (to the extent the ruler deems fit). The husband, however, may accuse his

wife (of adultery) if she did commit adultery but did not become pregnant. But if she, on this account, did become pregnant and then gave birth to a child, the husband should then accuse her and disclaim the child, lest a child who is not his be ascribed to him.

And if a husband accused his wife (of adultery), she might either confess or resort to mutual malediction ⁽¹⁾, as has Allâh mentioned in the Book and as is related in the Sunna. In case the accuser was a slave (and the accusation is false) he is punished with one half the penalty (one half the number of stripes) imposed on the free man as is the case also (in punishing him for) adultery and drinking wine — then Allâh, be He exalted has said in connection with girl slaves: "... Then if they are guilty of adultery — after they are taken in marriage — they shall suffer half the punishment for free married women" (IV 25). If the penalty, on the other hand, was the death penalty or cutting off the hand, then it could not be halved.

(1) Mutual malediction takes the following course: when a husband accuses his wife of adultery, he should declare solemnly, swearing by Allâh four times that he is truthful and a fifth time that he may suffer a curse from Allâh if he is telling a lie. If the wife wishes to refute the accusation of her husband, then she should declare solemnly four times that he is a liar and a fifth time that the wrath of Allâh should befall her if he were telling the truth.

CHAPTER FIVE

Matrimony

Of the rights (due to a married couple) is copulation. It is necessary that the husband and the wife should treat each other according to what Allâh, be He exalted, has enjoined: "living together in good fellowship or separation with kindness" (cf. ii 229). Each one of the couple should accord to the other the rights due to him willingly and delightfully. The wife has a right to the husband's property represented by the dowry and maintenance according to usage, as well as to his body represented in good companionship and enjoyment. So if a husband swore not to come near to his wife, a separation should be effected between them, as per consensus of all Muslims. Also if he was castrated or impotent, incapable of maintaining copulation with her, she may demand separation, since (maintaining) copulation with the wife is a duty of the husband as agreed to by the majority of the learned men in the Law.

It has been said that (maintenance of copulation) is not necessary; (the only necessity is response) to the natural impulse (in the husband). The truth is that (the maintenance of copulation) is necessary, as indicated by the Book, the Sunna and the fundamentals of Religion. In this respect, the Prophet, peace be upon him, has said to 'Abdullah Ibn 'Umar, may Allâh bless him, on knowing that he was given up mostly to fasting and prayer: "Your wife has a right to you!"

It has then been said that the husband should come near to his wife once every four months (at least); it is said too that this should be moderately done, as much as he can afford and as much as she really needs — as in the case of economic maintenance — which is more probable. The husband has the right to enjoy his wife whenever he wishes, unless that would cause her some harm or make her neglect an (important) duty; otherwise she should consent to his wish.

The wife should not leave the husband's house (permanently or temporarily) except by permission from her husband or from the judge. The jurists, moreover, hold various opinions as to management of the house: should she take care of the furniture, cleanliness, cooking and the like? Some are of the opinion that she should; others say she should not, others still say that she should manage the lighter affairs of the house only.

CHAPTER SIX

Transactions

Transactions should be settled among the people equitably, as have Allâh and His Messenger enjoined in the case of dividing bequests among heirs, for example, according to the Book and the **Sunna**.

Muslims maintain different opinions in this regard, as well as regarding other transactions: selling and buying, rents, appointment of an agent, partnerships, grants, charitable funds, testaments and other similar transactions relative to contracts and acts of receiving (of money, real estate, etc.). Equity in settling these transactions is the basis of the welfare of the people, then neither (the affairs of) this life nor of the other life may prosper without equity. Some aspects of equity are apparent and known to everyone by his own reason, namely, paying the price (of the commodity) by the buyer (to the seller), delivery of the commodity by the seller to the buyer, the prohibition of giving short measure and weight, the necessity of telling the truth and of giving true accounts, the prohibition of telling lies, of unfaithfulness and of cheating and observing that the (equitable) recompense of lending is to settle one's debt and to thank the lender.

Some (other aspects of equity, however) are vague (to the common man), but the (divine) Laws (of ancient peoples) as well as our (Islamic) Religion have explained them to the followers of Islam. All that the Book and the **Sunna** have prohibited of the transactions aims at the realization of equity and at the prohibition of injustice whether light or grave. These aspects include: appropriation of the property of others unjustly, or by usury and gambling. Certain aspects of usury and gambling, in particular, which the Prophet, peace be upon him, has forbidden are (for example):

- a) selling of commodities or lands not possessed by the seller,

- b) selling of animals still unborn,
- c) selling of birds not yet hunted and of fish not yet caught,
- d) selling of the *musarrât* (the ewe which has not been milked for a long time, to impose on the buyer falsely that its milk is always abundant),
- e) selling of commodities of which the defects have been disguised,
- f) selling of commodities while allowing the buyer to touch them only, without seeing (or examining) them,
- g) selling a piece of cloth (or a dress) without exposing it adequately to the buyer,
- h) selling of commodities haphazardly without weighing or measuring,
- i) selling agricultural produce not yet ripened,
- j) prearranging with a man to bid a high price for a commodity, so as to induce others to buy it at a lower (but still a high) price,
- k) selling the fruits before they show any sign of ripening.

Added to all these are also prohibited all kinds of invalid partnerships, such as partnership in cultivating a tract of land in return for the products of a certain piece of it.

Belonging to this category also are all cases that Muslims may dispute because of certain ambiguity and obscurity, as one would consider a contract or an act of receiving a sum of money or taking possession of a domain as correct and equitable while another man sees in it a degree of injustice sufficient to nullify it. (In this respect) Allâh, be He exalted, has said: "O you who believe, obey Allâh and obey the Messenger and those in authority from among you; then if you quarrel about anything, refer it to Allâh and the Messenger, if you believe in Allâh and the Last Day. This is best and more suitable to (achieve) the end" (IV 59).

The underlying principle in this (foregoing discussion is the fact) that none of the transactions which the people carry out is prohibited other than those which the Book and the Sunna

have prohibited, and that no aspect of worship which brings the people nearer to Allâh is enjoined on them except what the Book and the Sunna have enjoined. Religion is what Allâh has instituted, and a prohibited (act) is what Allâh has prohibited. This is unlike the (behaviour) of those whom Allâh has condemned, as they have prohibited, independently of Allâh, what Allâh did not prohibit and associated with Him various beings, while no being is to be associated with Him; and they have instituted for themselves aspects of religion which Allâh has not permitted.

Our Lord, help us to make lawful that which You have made lawful, and to make unlawful that which You have made unlawful and to make Religion that which You have instituted.

CHAPTER SEVEN

Counsel

The Ruler cannot dispense with counsel; Allâh, be He exalted, has enjoined His Prophet, peace be upon him, to take counsel together (with his Companions). He said: "... So pardon them and ask forgiveness for them, and consult with them in (important) matters. But when thou hast determined, put thy trust in Allâh. Surely Allâh loves those who trust in Him" (iii 157). And it has been related from Abû Huraira, may Allâh bless him, that he has said: "No one took more counsel with his companions than the Messenger of Allâh, peace be upon him."

It is said that Allâh has enjoined His Prophet (to take counsel together with his Companions) to win their hearts and to set an example for those who were to come after his time, and to make (his Companions) express their views on matters which revelation did not touch, such as the affairs of war and other affairs concerning the particulars (of worldly life). Otherwise, everyone other than (the Prophet), peace be upon him, needs to take counsel with others. Allâh has praised the Faithful on this account, saying: "... And that which Allâh has is better and more lasting for those who believe and rely on their Lord; And (for) those who shun the great sins and indecencies, and whenever they are angry they forgive; and (for) those who respond to their Lord and keep up prayer, and whose affairs are (decided) by counsel among themselves, and who spend out of what We have given them" (XLII 36-38).

When (the ruler) takes counsel (with his companions) and one of them indicates to him what he should follow as prescribed by the Book of Allâh, by the *Sunna* of His Messenger or by the consensus of the Muslims, he (the ruler) should comply with it. No other (source of authority than Allâh, His Messenger and consensus) should be obeyed — though he

might be a great man in (the science of) Religion and (in the affairs of) the world. Allâh, be He exalted, has said: "O you who believe, obey Allâh and obey the Messenger and those in authority from among you" (IV 59, etc.).

And if the Muslims happened to quarrel over a matter, (the ruler) ought to ask every one of them his opinion and the reason for expressing such an opinion. The opinion more in conformity with the Book of Allâh and the *Sunna* of His Messenger should be followed by him, as Allâh has said: "... Then if you quarrel about any thing, refer it to Allâh and the Messenger, if you believe in Allâh and the Last Day. This is best and more suitable to (achieve) the end" (IV 59).

The rulers are of two classes: the princes (of political authority) and the learned men (in the Law). These are those who if they aimed at reform, everyone would be reformed. It is the duty of each one of the members of these two classes to seek, in all that he says and does, obedience to Allâh and His Messenger and conformity with (that which) the Book of Allâh (enjoins). And when it is possible in the critical times to know what the Book and the *Sunna* indicate, then that should be followed. If that is not possible — because of lack of time, of incapacity to judge or because of indecisive arguments on both sides — he may follow (in every particular case) in the steps of those whose knowledge and piety he respects. This is the most weighty of opinions.

It is said too, that (the ruler) ought not to imitate the proceedings of jurists in every single case. (Others maintain that he ought to). All three opinions are held by jurists of the school of Ahmad and of other schools as well. Similarly, the conditions required for the office of the judge or the viceroy should be insisted upon only as far as possible. Even the conditions required for valid worship, as, for example, prayer and undertaking *jihâd* (holy war) and the like, are to be fulfilled only by persons who are capable of doing so; in the case of incapacity, on the other hand, "Allâh imposes not on any soul

a duty beyond its scope" ⁽¹⁾ (cf. II 286, 233, etc.) (These offices are filled by the best men available). Consequently, Allâh has enjoined that every one who proceeds to prayer should make his ritual ablution with water. If water is not available or if the use of water is harmful to him, because of excessive cold or of a wound (in one or more of the parts of the body to be washed), he may perform ritual ablution (symbolically): betake himself to pure earth, touch it with his hands open and then wipe his face and his arms with them (cf. IV 43). In this spirit, the Prophet, peace be upon him, said (once) to 'Imrân Ibn Huçain ⁽²⁾ : "Perform (your) prayer standing (where standing is necessary); if you are not able, perform it sitting; if you are not able (to perform it sitting, perform it) while lying on (your) side." Allâh has thus enjoined that prayer should be performed at the assigned times, but in the manner possible to the performer. Allâh has said (in this connection): "Observe strictly (all) the prayers and the middle prayer ⁽³⁾, and stand up full of devotion towards Allâh. But if you are in danger (say your) prayer on foot or on horseback. And when you are

(1) Allâh does not require from any man to perform a duty or accomplish a deed if that man is unable (for lack of force, of intellect, of liberty, etc.) to do so.

(2) 'Imrân Ibn Husain, d. 52 A.H. (672 A.D.) embraced Islam as early as the year 7 A.H. (628 A.D.), was a famous Companion and took part in certain expeditions which the Prophet led. Later he became Cadi (judge) in Basra under 'Abdullâh Ibn 'Amir Ibn Kuraiz who was governor of Basra at two intervals, from 29-35 A.H. and from 41 to 44 A.H.

(3) The middle prayer is the afternoon prayer (between midday and sunset). A Muslim should perform that prayer as soon as possible after its assigned time, because the interval between that prayer and sunset is very short. In respect to the middle prayer and its performance, the jurists entertain different opinions.

secure ⁽¹⁾, remember Allâh as He has taught you what you did not know before" (ii 238-239). So Allâh has enjoined prayer on everyone (whether he be) in safety or in danger, sound of body or sick, rich or poor and (whether resident or on travel; but He enjoined only a lighter (and shorter) form of it on the traveller, on him who feels an impending danger and on the sick, as indicated by the Book and the *Sunna*.

In prayer there are certain duties which Allâh has imposed, such as purity (or cleanliness of body, of dress and of the place where prayer is held), the covering of the middle part of the body and turning one's face towards Mekka. But if the servant (of Allâh) cannot fulfil any of these, Allâh has allowed him to dispense with them. If a ship was wrecked (with some people) or highwaymen have stripped them of their clothes, they may perform prayer naked (completely or partly) as the case may be; the leader in prayer, however, would then stand in their midst, so that they might not see his private parts. If the direction towards Mekka ⁽²⁾ was not clear to them, they may do (in that case) their best to determine it; if every indication of it was lost, then they may pray with their faces towards the direction that they may happen to choose. It is related that (some) Muslims have done so at the time of the Messenger of Allâh, peace be upon him. The same principle (doing one's best, and to the best of one's knowledge) applies to undertaking a holy war, to the filling of state positions and to the rest of religious affairs, as indicated by (the underlying principle stated by) Allâh's Saying, be He exalted: "So keep your duty to Allâh as much as you can" (LXIV 16) as well as in the Saying of the Prophet, peace be upon him: "If I ordered you to do a thing, do of it as much as you can." And when Allâh forbade men to eat impure foods, he said (making an exception

(1) ... When you are secure (under normal conditions not in danger, not sick, etc.).

(2) When a Muslim gets up to pray he stands with his face towards Mecca.

only in the cases where men are in a state of need): "Then whoever is driven by necessity — not of sheer desire or consuming more than that he needs for subsistence — he commits no sin" (ii 173).

(This is the general trend in Islam, so) Allâh, be He exalted, has said: "And (He) has not laid upon you any hardship in Religion" (XXII 78) and "(Allâh) desires not to place a burden on you" (V 6).

(From the fore-going discussion it is concluded that) Allâh neither enjoined what one cannot perform, nor has He forbidden what one is in need of, if that need does not lead one to committing a sin.

CHAPTER EIGHT

The Necessity for Authority

It should be known that the exercise of authority (for the benefit) of the people is (one) of the greatest religious duties. Neither Religion nor world order may be established without it. The children of Adam ⁽¹⁾ cannot insure the realization of their (common) interest except by meeting together, because every one of them is in need of every other one. And when they meet together, it is inevitable for them to have a head (a chief), so that the Prophet, peace be upon him, has said: "If three of them were on a journey, they should choose one of them as prince" (leader) (related by Abû Dâwûd on the authority of Abû Sa'îd and Abû Huraira).

The Imâm Ahmad (Ibn Hanbal) has related in his **Musnad** on the authority of 'Abdullâh Ibn 'Amr ⁽²⁾ that the Prophet, peace be upon him, has said: "If three (of you) are in a desolate tract of land, one of you must be chief". The Prophet, peace be upon him, has thereby enjoined that even in a small transient meeting — on a journey — there should be one chief, implying thereby that (men should behave in this way) in all other kinds of meeting and because, furthermore. Allâh, be He exalted, has ordered that (men) should enjoin good and prohibit evil. This can only be accomplished by force and authority. Also, all that Allâh has enjoined, like undertaking **jihâd** (holy war), administering justice, performing pilgrimage

(1) Children of Adam: mankind, men.

(2) 'Abdullâh Ibn 'Amr Ibn al-'As was a pious learned man and one who transmitted Hadîth. It is said that he was acquainted with the religious literature of the Jews and the Christians. He was for a short time governor of Kufa in 41 A.H. (661 A.D.). Later he moved to Egypt where he died in 65 A.H. (684-685 A.D.).

or Friday prayer or prayer on feast days ⁽¹⁾, as well as relieving the oppressed and execution of penalties, can only be accomplished by force and authority. It is (in reference to this) that it is related: "The ruler is Allâh's shadow on Earth". It is also said that: "Sixty years (domination) of a despotic ruler are better than one single night (passed) without a ruler". Experience has proved this. Consequently, the early Muslims, like Fudail Ibn 'Iyâd ⁽²⁾ and Ahmad Ibn Hanbal and others, used to say: "Were our invocation answerable by Allâh, we would pray that the ruler (be helped and strengthened by Him)." The Prophet, peace be upon him, has also said: "Allâh wants you to abide by three things: Worship Him and associate with Him and no other, hold fast by the covenant of Allâh all together and not disperse, and give good counsel to those whom Allâh has made men of authority over you" (related by Muslim). He has also said: "Three (things) no Muslim would hate: sincerity in actions (for the sake of) Allâh, giving good counsel to those who are in authority and abiding by the (opinions agreed upon by the) Muslim community". Then (if Muslims did respond to these), three things, these three things would encompass them on all sides (and protect them) (related by the Compilers of Sunan). It is (further) related from the Prophet in his authentic Traditions that he has said: "Religion is to give good counsel, Religion is to give good counsel, Religion is to give good counsel (repeated three times)". Those (who were around him) asked: "To whom, O Messenger of Allâh?" He answered: "To Allâh, to His Book and to His Messenger (that is: to give good

(1) Friday prayer (at noon) and prayers on feast days (shortly after sunrise on the day following the month of Ramadân, the month of fasting, and on the 10th. of Dhu-l-Hijja — pilgrimage being on the 9th. — are performed in common. They may not be performed individually, since they are intended to be meetings of Muslims on special occasions.

(2) Al-Fudail Ibn 'Iyâd, d. 187 A.H. (803 A.D.) was a mystic and a man acquainted with Hadith.

Counsel sincerely according to what is enjoined by Allâh etc.), and to the leaders of the Muslims (in politics, science, etc.) and to the common people among them."

It is necessary that being in authority should be considered as (a part of) Religion and as a good action that brings one nearer to Allâh. Seeking to be nearer to Allâh through obedience to Him and to His Messenger is the best of (such) actions. (Unfortunately) the condition of most of the people is spoiled because they seek by (the show of) obedience to Allâh to secure leadership and accumulate money. (Bearing on this) Ka'b Ibn Mâlik has related from the Prophet, peace be upon him: "If two hungry wolves were let among sheep, they would cause no more devastation among these sheep than man's craving for money and prestige would do to his Religion" (Tirmidhi said that this is an authentic and hasan ⁽¹⁾ Tradition). (In this Tradition the Prophet) has told (us) that man's craving for money and prestige (or leadership, rule) spoils his religious life like letting two hungry wolves into the fold of sheep. Allâh, be He exalted, has told of the man who will be given his book (on the Day of Judgement) in his left hand (and sent to Hell) that he says: "My wealth has not availed me. My authority has gone from me" (LXIX 28-29).

The greatest wish of a man who craves for authority is to be like Pharaoh, and a man who is greedy for the accumulated money is to be like Korah (Arabic: Qârûn). Allâh, be He exalted, has said of Pharaoh and Korah: "Have they not travelled in the land and seen what was the end of those who were before them? Mightier than these ⁽¹⁾ were they in strength and

(1) A Hadith (Tradition, Saying of the Prophet) is described as **hasan** (good) when it is not fully **Sahih** (authentic). Tirmidhi alone uses the combined term **hasan-Sahih** and means by it that the Hadith thus described is to be considered practically authentic.

(2) ... before them: before the time of Pharaoh and Korah. Mightier than these (than Pharaoh and Korah).

fortifications in the land, but Allâh destroyed them for their sins. And they had none to protect them from Allâh (XL 21). Allâh, be He exalted, has also said: "That abode of the Hereafter, We assign it to those who have no desire to exalt themselves in the earth, nor to make mischief. And the good end is for those who keep their duty." (XXVIII 83).

The people are of three classes:

The first class includes those who desire to exalt themselves over all others and to make mischief in the land, which is sinning against Allâh, like Pharaoh and his group. These are the worst of all creatures (of Pharaoh in particular) Allâh, be He exalted, has said: "Surely Pharaoh exalted himself in the land and made its people into parties, weakening one party from among them; he slaughtered their sons and let their women live. Surely he was one of the mischief makers" (XXVIII 4). Further, Muslim has related in his *Sahih*, on the authority of Ibn Mas'ûd, may Allâh bless him, that the Prophet, peace be upon him, has said: "No one in whose heart is an atom's weight of haughtiness may enter Paradise, and no one in whose heart is an atom's weight of Faith may enter hell-fire. A man said: O Messenger of Allâh, I want my dress to be fine and my behaviour to be refined; does this belong to haughtiness? No, said (the Prophet). Surely Allâh is *beautiful*, and He loves beauty. Haughtiness (on the contrary) is to reject the truth and to despise the people." This denotes the character of those who desire to exalt themselves and to make mischief.

To the second class belong those who make mischief without the desire to exalt themselves, like the thieves and criminals of the baser elements of the people.

The third class includes those who desire to exalt themselves but who have no desire to make mischief. Of these are those who comply with (the precepts of) Religion but who try to use Religion as a stepping stone to attain domination over other people.

Included in the third class are those who are destined

to enter Paradise: those who desire not to exalt themselves nor to make mischief, though they might be higher than other people in rank, as Allâh has said: "And be not weak-hearted, nor grieve, and you will have the upper hand if you are believers" (III 138). And He, be He exalted, has said: "And be not slack so as to cry for peace — and you are the uppermost — and Allâh is with you, and He will not bring your deeds to naught" (XLVII 35). He also has said: "And might belongs to Allâh and His Messenger and the believers" (LXIII 8).

Many of those who long for exaltation increase not but achieve only lowliness; and many of those become really exalted, even though they never longed for exaltation, caused mischief. This is because longing for exaltation over the people is (an aspect) of oppression, since all people are of the same kind. So if a man longs to be himself the uppermost and to see his peers below him (in rank), he is committing oppression. And in addition to its being oppression, the people entertain hate and animosity for such a man: the righteous of them does not like to be oppressed by his peer, and the unrighteous prefers to be himself the supreme. It is inevitable, however, according to Religion and to Reason, that some people should be superior to others, in analogy to the body which cannot exist except with a head. Allâh, be He exalted, has said (in this respect): "And He it is Who has made you successors in the land and exalted some of you in rank above others, that He may try you by what He has given you" (VI 166). Also He, be He exalted, has said: "... We portion out among them their livelihood in the life of this world, and We exalt some of them above others in rank, that some of them may take others in service" (XLIII 32). In this way Religion enjoined that authority and money be dispensed in the cause of Allâh.

If authority and wealth were intended to make one come nearer to Allâh, and were virtually dispensed in His cause, then that would lead to the establishment of Religion and to

prosperity in worldly affairs. If, on the other hand, authority was divorced from Religion or Religion was divorced from authority, then the whole affairs of the people would be spoiled. Those who are obedient to Allâh are distinguished from those who are disobedient to Him by the (good) intention and the good action, as has been related in the **Two Sahihs** from the Prophet, peace be upon him, that "Allâh looks not at your forms nor at your wealth, He looks into your hearts and into your actions."

But when a great many of those in authority became dominated by greed for wealth and love of honour, they ceased to care about the reality of the Faith and the furtherance of Religion. On the other hand many more were dominated (solely) by Religion and turned away from the affairs of this world (which surely help to establish Religion). Others understood the need for worldly affairs (which lead to the perfection of religion) but contented themselves with worldly preoccupations and turned away (completely) from Religion, believing that the two are contradictory). Consequently, Religion became, according to the latter, a matter of humiliation and misfortune, not of joy and (real) strength.

In the same way, certain communities considered it impossible to establish a perfect religion (in the manner described above) because their thoughts were on the next world and they were, further, afraid of what might happen to them in this world if they tried to establish Religion with the help of authority and with war. Thus their way of life was regarded as deficient and undependable by those who realized that their own interests and the interests of their own community could not then be safeguarded by either. The middle way, that is the exercise of authority to establish Religion and world order is the way of those on whom Allâh has bestowed favours from among the prophets, the truthful, the faithful and the righteous, which is the way of the Prophet Muhammad, peace be upon him, as well as the way of his successors.

These two faulty ways — the way of the man who is given up to Religion without an effort to render it perfect through authority, war and wealth; and the way of the man who busies himself with authority, war and wealth without any intention of establishing his religion therewith — are the ways of those on whom the wrath of Allâh is brought down and the way of those who go astray.

The straight way is the way of those on whom Allâh has bestowed favours from among the prophets, the truthful, the faithful and the righteous, which is the way of our Prophet Muhammad, peace be upon him, as well as the way of his Successors and his Companions and of those who followed in their steps: who are the foremost and the first (generation) of the Emigrants (with the Prophet from Mecca to Medina) and the Ansâr (the people of Medina who received the Emigrants) and those who followed them in goodness and with whom Allâh is pleased and who are pleased with Him and for whom He has prepared (in the hereafter) Gardens through which rivers flow, and in which they will abide for ever; that is the Mighty achievement.

It is the duty of every Muslim to act (in the straight way) to the best of his efforts, since he who agrees to be invested in a public function with the intention of obeying Allâh (in administering that function) and of safeguarding his Religion and the affairs of the Muslims, then he did perform, as far as he could, the duties imposed on him and did equally avoid the prohibited (actions), as far as he could. He is not responsible for what he is incapable of performing. To have righteous people in the public functions (with few accomplishments) is, however, better than to have therein unrighteous people. And he who is incapable of establishing Religion with authority and holy war, then he performed only the part he was able to perform: wished good (to his brethren Muslims), invoked (Allâh for the amelioration of the conditions) of the community, entertained

love for Religion ⁽¹⁾ and performed the few good actions which he was able to perform, he would not be called upon to accomplish what he is incapable of. The establishment of Religion is assured by the guidance of the Book (of Allâh) and the Tradition (of the Prophet) which support ⁽²⁾ (the Book), as Allâh has mentioned.

So everyone should give (in his actions) preference to what the Qur'ân and the Tradition have enjoined, for the sake of Allâh, and to ask Allâh (the favours) Allâh has (for us) (and which can be secured only) through His help.

Furthermore, the (prosperity in the affairs of this) world supports the Religious (life), as Mu'âd Ibn Jabal, may Allâh bless him, has said: "O son of Adam, you are in need of your share of this world, but to your share of the hereafter you are in more need. So if you began by (taking care of) your share of the hereafter, it would secure (by the way) your share of this world in the best accomodation; but if you began with (the affairs of) this world, you would miss your share of the hereafter and risk your share of this world." This is proved by that (Tradition) which Tirmidhî related of the Prophet, peace be upon him: "He who wakes up in the morning with the hereafter the greatest of his concerns, Allâh will keep his household united (with him at home) and make his heart the home of his wealth, (will not let him be tormented with craving for things which he could not possess) and the whole world (prosperity and prestige) will come and lie at his feet. But he who wakes up in the morning with this world the greatest of his concerns, Allâh will disperse his household (and his means of earning a living), make his poverty stand out before his eyes (menaced with poverty at every moment), then he will only

(1) Love for Religion (Islam) and its followers (Paris MS 57A, line 8). In the printed editions (by M.M. Khalil & by Nashshâr and 'Atiyya): love for good.

(2) Which support the Book: to strengthen its argument.

get of this world what Allâh had assigned to him." All this is originally included in Allâh's Saying: "And I have not created the jinn ⁽¹⁾ and the men (for any other object) than that they should worship me. I desire no sustenance from them, nor do I desire that they should feed me. Surely Allâh is the Bestower of sustenance, the Lord of power, the Strong" (LI 56-58).

We pray Allâh the Mighty to help us attain — we, our friends and all the Muslims — that which He wants us to attain and with which He would be pleased, as regards words and actions. There is no strength nor power except by the help of Allâh. And Praise be to Allâh the Lord of the worlds. And May Allâh bless our master Muhammad and his family and his Companions and salute them a (becoming) salutation, abundantly and permanently till the Day of Judgement.

(1) Jinn: incorporeal beings. They are divided into two classes: faithful (Muslims) and infidels, consequently righteous (benevolent) and unrighteous (mischievous).

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